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FEDERAL ONSHORE OIL AND GAS LEASING

HEARING

BEFORE THE

SUBCOMMITTEE ON MINERAL RESOURCES
DEVELOPMENT AND PRODUCTION

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 66

TO PROVIDE FOR COMPETITIVE LEASING FOR ONSHORE OIL AND GAS

S. 1388

TO AMEND THE ACT OF FEBRUARY 25, 1920, TO REFORM FEDERAL ONSHORE OIL AND GAS LEASING PROCEDURES

JUNE 30, 1987

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Committee on Energy and Natural Resources

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FEDERAL ONSHORE OIL AND GAS LEASING

JUNE 30, 1987

U.S. SENATE,
SUBCOMMITTEE ON MINERAL RESOURCES
DEVELOPMENT AND PRODUCTION,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:07 a.m., in Room SD-366, Dirksen Senate Office Building, Hon. John Melcher, presiding.

OPENING STATEMENT OF HON. JOHN MELCHER, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator MELCHER. The subcommittee will come to order. This morning we are going to hold a hearing to receive testimony on two bills, S. 66 and S. 1388, which would reform the Federal Onshore Oil and Gas Leasing Program.

On January 6th of this year Senator Bumpers introduced S. 66, and on June 18th I introduced S. 1388. Both bills would provide for a two-tiered leasing system and would eliminate the problems we have with "known geologic structure." That is a designation that in current law the Department must decide on in case of oil leases.

When we had the oil price drop from $30 a barrel to as low as $9 a barrel, well, exploration and drilling dropped off on the continental United States. In Montana drilling rigs went down 57 percent in the course of just a few months.

In Colorado this decline was 50 percent. In Wyoming it was down over 61 percent. Now, there is a little price improvement in oil. It has come back to $20 a barrel. There is a chance that that figure, if it is going to remain at $20, that we will see rigs getting out, drilling some more oil.

I think we have five rigs working in Montana, for instance, this year, right now, which is not very much but it is better than none working, which was the case about a year ago. I do not know what the case is in Wyoming or North Dakota or Colorado, or New Mexico. But I hope it is on the upswing.

These two bills have some similarity. But it is fair to say that the one I introduced is more designed to encourage independent producers to get out there and look for some more oil, and try drilling. That is what it is all about. It is all about production.

Now I believe it is about time that Congress do something about production of our own domestic supplies. So I drafted a bill that I think would bring that about. In our case in Montana, we probably will not have a great deal of interest in our share of the Wilston Basin unless oil prices get up to around $23 or $24 per barrel.

I do not know if the price of oil is going to get that high. But I do believe that it is time now to set the stage to where, if oil prices recover to that level, we are going to have more activity in fields such as Wilston Basin.

Now other states can speak for themselves. But I believe that what we see in Montana, we are kind of on the fringe. We need that $23 to $24 per barrel price in order to encourage production.

A lot of oil patches in Texas are probably showing more activity now at the $18 to $20 per barrel range. I have been here since 1969, either in the House or in the Senate, and I want to recite just very briefly my experience in working with various administrations on trying to develop "an energy policy."

There was not any energy policy under Nixon. Ford was there only for a short time, and it would probably be unfair to expect him to develop an energy policy. The Carter Administration did not develop an energy policy of any great magnitude.

And this administration, having had now, what is it, six and a half years to start doing something, they are not out of the blocks yet. Almost every bill that I have been involved with in production has been opposed at some stage by whatever administration was in power.

The Alaskan Pipeline bill had only two questions. Were we going to build it, number one. Number two, when. The administration at that time, the Nixon Administration, says, well, let us build it.

When we got to the question of when, that was pretty fuzzy. Maybe two or three years from that time. It had been taken into court by environmental groups. The court found that they had to just widen the right-of-way so it could be built.

So we passed that kind of a bill. And as to when, the House said, now. Not two or three years from then, but now. I was in the House then and that was our position. The Senate's position was like the administration's position.

They said, oh, well, do not rush it. Do not waive further judicial review. But we did. The House won on that point, and so it was built right then. And as events proved, it seemed to be the right judgment because we had the oil embargo occurring right at the same time.

We wanted to open Elk Hills up, the residents sit on that oil. And the administration opposed opening it up. But we did, to produce the oil.

We have got ANWR before this committee now, with the same types of arguments we heard on the Alaskan Pipeline bill. What about the caribou, for instance. We decided finally when we passed the Alaskan Pipeline bill, the caribou do fine. And they have.

But I am not trying to prejudge what this committee will do on ANWR. I just mention that as one of the arguments from the passage of the Alaskan Pipeline bill.

In later years we have developed the legislation here in this committee that says, we are going to have a Department of Energy. It seemed like a good idea, and I still think it is a good idea. But that has not brought us to an energy policy.

At the same time we are talking about this bill here and should we have more drilling, onshore drilling in the United States. We are debating what should be our policy in the Persian Gulf.

So I think we find ourselves sort of coming and going at the same time. But that is not anything new. When we passed the Alaskan Pipeline bill, we were talking about what could happen in the Gulf.

Now it is happening. And it is a case of uncertainty. And whether or not we make the right judgments to minimize that uncertainty, while that will be our intentions, we are still subject to what other people do.

But what we do in developing our own production on our own shores is our business and no one else is going to interfere with it from abroad. And it is that certainty, which is not trying to draw a conclusion, that this passage of a bill like this will be 100 percent sure of producing more domestic oil.

At least we would be doing the right thing to set the stage for that opportunity. The arguments that we have over the environmental concerns are going to be enunciated today by an environmental witness who will say that we should attach more requirements to the Mineral Leasing bill on decision-making on whether or not we are going to lease.

Now that is not in itself an unfair request or position. But I shall resist that very vigorously in attaching it to the mineral leasing amendments. And the reason I shall resist it is because it properly belongs as an amendment, if there are going to be amendments of that nature, to the Forest Management Act and to FLPMA, the Federal Land Policy Management Act.

As to this administration, they are going to testify that they would like to sort of continue with some rather detailed, rather confusing stipulations, requirements, new language, new law regarding leasing.

I do not share their opinion at all. I am of the opinion if you believe in production, that we could possibly have more production here onshore in the United States, we might as well write the bill very simply and very much to the point.

That is probably the major difference between Senator Bumpers' bill and my bill, and the committee, if we move a bill, will decide which is the best course, and I will bow to that decision.

Senator Bumpers.

[The texts of S. 66 and S. 1388 follow:]

II

100TH CONGRESS
1ST SESSION

S. 66

To provide for competitive leasing for onshore oil and gas.

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 1987

Mr. BUMPERS introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To provide for competitive leasing for onshore oil and gas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Onshore Competitive Oil and Gas Leasing Act of 1987".

SEC. 2. (a) Section 17(b)(1) of the Act of February 25, 1920 (30 U.S.C. 226(b)(1)), is amended to read as follows:

"(b)(1) All lands to be leased which are not subject to leasing under paragraph (2) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than two thousand five hundred and sixty acres, except in Alaska, where units shall be not more than five thousand one hundred and twenty acres, which shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding. Lease sales shall be held for each State, where appropriate, not less than quarterly, and more frequently if the Secretary determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty of 12.5 per centum in amount or value of the production removed or sold from the lease. The Secretary shall establish by regulation a minimum acceptable price which shall be the same for all leases and which is at least $20 per acre. The minimum acceptable price shall be established without evaluation of the lands proposed for lease. The Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater then the minimum acceptable price. All bids for less than the minimum acceptable price shall be rejected. Lands for which no bids are received or for which the highest bid is less than the minimum acceptable price shall become available for leasing under subsection (c) of this section for a period set by the Secretary not to exceed one year after the lease sale.".

(b) The first sentence of section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended to read as follows: "(1) If the lands to be leased are not leased under subsection (b)(1) of this section or are not subject to competitive leasing under subsection (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding.".

(c) Section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended by adding a paragraph to read as follows:

"(c)(2)(A) Lands (i) which were posted for sale under subsection (b)(1) of this section but for which no bids were received or for which the highest bid was less than the minimum acceptable price established by the Secretary and (ii) for which, at the end of the period established by the Secretary under subsection (b)(1) of this section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall be available for leasing only in accordance with subsection (b)(1) of this section.

"(B) The land in any lease which is issued under paragraph (1) of this subsection or under subsection (b)(1) of this section which lease terminates, expires, is canceled or is relinquished shall again be available for leasing only in accordance with subsection (b)(1) of this section.".

(d) The third sentence of section 17(d) of the Act of February 25, 1920 (30 U.S.C. 226(d)), is amended to read as follows: "A minimum royalty of not less than $1 per acre in lieu of rental shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased.".

SEC. 3. The third sentence of section 30(a) of the Act of February 25, 1920 (30 U.S.C. 187(a)), is amended to read as follows: "The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bonds: *Provided, however,* That the Secretary may, in his discretion, disapprove an assignment (1) of a separate zone of deposit under any lease, (2) of a part of a legal subdivision, or (3) of less than six hundred and forty acres outside Alaska or of less than two thousand five hundred and sixty acres within Alaska, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas. Requests for approval of assignment or sublease shall be processed promptly by the Secretary.".

SEC. 4. The first sentence of section 31(b) of the Act of February 25, 1920 (30 U.S.C. 188(b)), is amended to read as follows:

"(b) Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the Interior after thirty days' notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or unit plan or communitization agreement under section 17(j) of this Act which contains a well capable of production of unitized substances in paying quantities.".

SEC. 5. Section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148) is amended as follows:

(1) Subsections (c) and (e) (16 U.S.C. 3148 (c) and (e)) are deleted in their entirety.

(2) The second sentence of section 1008(d) (16 U.S.C. 3148(d)) is deleted.

(3) Subsections (d) and (f) through (i) (16 U.S.C. 3148 (d) and (f) through (i)) are renumbered subsections (c) through (g) respectively.

SEC. 6. (a) Notwithstanding any other provision of this Act and except as provided in paragraph (d) of this section, all noncompetitive oil and gas lease applications filed pursuant to regulations governing the simultaneous oil and gas leasing system (43 CFR subpart 3112) and pending on the date of enactment of this Act shall be processed, and leases shall be issued under the provisions of the Act of February 25, 1920 (30 U.S.C. 181 et seq.), as in effect before its amendment by this Act, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If the date of enactment of this Act occurs during a simultaneous filing period prescribed by the regulations of the Department of the Interior, all applications filed during that period shall be considered filed prior to the date of enactment.

(b) Notwithstanding any other provision of this Act and except as provided in paragraph (d) of this section, all noncompetitive oil and gas lease offers filed pursuant to regulations governing the over-the-counter leasing system (43 CFR subpart 3111) prior to January 1, 1987, shall be processed, and leases shall be issued under the Act of February 25, 1920 (30 U.S.C. 181 et seq.), as in effect before its amendment by this Act, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If the Secretary posts tracts for competitive sale containing lands in an over-the-counter noncompetitive lease offer filed between January 1, 1987, and the date of enactment of this Act, and if any such tracts do not receive bids greater than or equal to the minimum acceptable price established by the Secretary at the sale, the Secretary shall reinstate the noncompetitive lease offers for these tracts and shall issue leases in accordance with section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)).

(c) Notwithstanding any other provision of this Act, all competitive oil and gas lease bids filed pursuant to applicable regulations (43 CFR subpart 3120) pending on the date of enactment of this Act shall be processed, the high bid for each tract shall be accepted without further evaluation of the value of the tract, and leases shall be issued under the Act of February 20, 1920 (30 U.S.C. 181 et seq.), as in effect before its amendment by this Act, except where the issuance of any such lease would not be lawful under such provisions or other applicable law.

(d) No noncompetitive lease applications or offers ending on the date of enactment of this Act for lands within the Shawnee National Forest, Illinois; the Ouachita National Forest, Arkansas; Fort Chaffee, Arkansas; or Eglin Air Force Base, Florida; shall be processed until these lands are posted for competitive bidding in accordance with section 2 of this Act. If any such tract receives no bid from a responsible qualified bidder then the noncompetitive applications or offers pending for such a tract shall be reinstated and noncompetitive leases issued under the Act of February 20, 1920 (30 U.S.C. 181 et seq.), as in effect before its amendment by this Act, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If competitive leases are issued for any such tract, then the pending noncompetitive application or offer shall be rejected.

SEC. 7. (a) Except as provided in section 6 of this Act, all oil and gas leasing pursuant to the Act of February 25, 1920 (30 US.C. 181 et seq.), after the date of enactment of this Act shall be conducted in accordance with the provisions of this Act.

(b) The Secretary shall issue final regulations within one hundred and eighty days after the date of enactment of this Act. The regulations shall be effective when published in the Federal Register.

(c)(1) Prior to issuing regulations implementing this Act, the Secretary shall hold at least one competitive lease sale pursuant to section 2 of this Act. Sale procedures shall be established in the notice of sale. This sale shall include tracts which, but for the enactment of this Act, would have been posted for the filing of simultaneous oil and gas lease applications pursuant to applicable regulations (43 CFR subpart 3112). The Secretary may also include in the sale tracts which would otherwise have been posted for competitive sale pursuant to applicable regulations (43 CFR subpart 3120) and tracts which received over-the-counter noncompetitive oil and gas lease offers pursuant to applicable regulations (43 CFR subpart 3111) between January 1, 1987, and the date of enactment of this Act. The Secretary may hold additional sales if he considers it necessary prior to the issuance of final regulations pursuant to subsection (b) of this section.

(2) If tracts which would, but for the enactment of this Act, have been posted for the filing of simultaneous applications do not receive bids of greater than or equal to the mini-

mum acceptable price established by the Secretary at a competitive sale held under this section, they shall subsequently be posted for the filing of simultaneous applications provided the Secretary has not yet issued regulations under subsection (b) of this section.

(3) If no competitive or noncompetitive leases are issued for lands posted for sale as provided in paragraph (c) of this section, the Secretary shall lease such tracts in accordance with the regulations issued pursuant to paragraph (b) of this section.

SEC. 8. The Act of February 25, 1920 (30 U.S.C. 181 et seq). is amended by adding at the end thereof the following new section:

"SEC. 43. Actions taken by the Secretary of the Interior to develop regulations and procedures for a competitive oil and gas leasing program or to hold particular lease sales shall not be subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969. Except as otherwise provided in this section, nothing in this Act shall be considered as affecting the application of section 102 of the National Environmental Policy Act of 1969."

SEC. 9. The Act of February 25, 1920 (30 U.S.C. 181 et seq.), is amended by inserting after section 40 the following new section:

"SEC. 41. (a) Any person shall be liable under the standards set forth in subsections (c) and (d) of this section if that person misrepresents to the public by any means of communication the following:

"(1) The value or potential value of any lease or portion thereof issued under this Act;

"(2) the value or potential value of any lease or portion thereof to be issued by this Act;

"(3) the value or potential value of any land available for leasing under this Act;

"(4) the availability of any land for leasing under this Act;

"(5) the ability of the person to obtain leases under this Act on his or her own behalf or on behalf of any other person; or

"(6) the provisions of this Act and its implementing regulations.

"(b) Any person who organizes, or participates in, any scheme, arrangement, plan, or agreement to circumvent the provisions of this Act or its implementing regulations shall be liable under the provisions of this section.

"(c) The Attorney General shall institute against any person who, given the nature of the intended recipient of the communication, knew or should have known he or she was violating subsection (a) or (b) of this section, a civil action, in the district court of the United States for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but not limited to, a prohibition from participation in exploration, leasing, or development of any Federal mineral, or both.

"(d) Any person knowingly and willfully violates the provisions of this section shall, upon conviction, be punished by a fine of not more than $500,000 for each violation or by imprisonment for not more than five years, or both.

"(e)(1) Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee, or agent of such corporation or entity who authorized, ordered, or carried out the proscribed activity shall be subject to the same action.

"(2) Whenever any officer, employee, or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action.

"(f) The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties, fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines, and imprisonment afforded by any other law or regulation.

"(g)(1) A State may commence a civil action under subsection (c) of this section against any person conducting activity within the State in violation of this section. Civil actions brought by a State shall only be brought in the United States district court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) of this section.

"(2) This State shall notify the Attorney General of the United States of any civil action filed by the State under this subsection within thirty days of filing of the action.

"(3) Any civil penalties recovered by a State under this subsection shall be retained by the State and may be expended in such manner and for such purposes as the State deems appropriate. If a civil action is jointly brought by the Attorney General and a State, by more than one State or by the Attorney General and more than one State, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action in accordance with a written agreement entered into prior to the filing of the action.

"(4) Nothing in this section shall deprive a State of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section.".

SEC. 9. Section 35 of the Act of February 25, 1920 (30 U.S.C. 191), is amended by adding the following at the end of the section: "In determining the amount of payments to States under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States."

SEC. 10. The Secretary shall submit annually to the Congress a report containing appropriate information on the implementation of this Act. Such report shall include, but not be limited to:

(a) the number of acres leased, and the number of leases issued;

(b) the amount of revenue received from bonus bids, rentals, and royalties;

(c) the amount of production from competitive leases issued under this Act and from competitive and noncompetitive leases issued prior to the enactment of this Act; and

(d) such other data and information as will facilitate—an assessment of the onshore oil and gas leasing system, and (ii) a comparison of the system as revised by this Act with the system in operation prior to this Act.

II

100TH CONGRESS
1ST SESSION

S. 1388

To amend the Act of February 25, 1920, to reform Federal onshore oil and gas leasing procedures.

IN THE SENATE OF THE UNITED STATES

JUNE 18, 1987

Mr. MELCHER introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To amend the Act of February 25, 1920, to reform Federal onshore oil and gas leasing procedures.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be referred to as the "Federal Onshore Oil and Gas Leasing Act of 1987".

SEC. 2. (a) Section 17(b)(1) of the Act of February 25, 1920 (30 U.S.C. 226(b)(1)), is amended to read as follows:

"(b)(1) Other than lands subject to leasing under paragraph (2) of this subsection, all lands to be leased, except those available for leasing under subpart 3111 of title 43 of the Code of Federal Regulations on the date of enactment of the Federal Onshore Oil and Gas Leasing Act of 1987, shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding in units of not more than two thousand five hundred and sixty acres, except in Alaska, where units shall be not more than five thousand one hundred and twenty acres, which shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding. The Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater than $1 per acre. All bids for less than $1 per acre shall be rejected. Lands for which no bids are received, or only bids below $1 per acre are received, shall be available for leasing without competitive bidding under subsection (c)(1) of this section. Lease sales shall be held in each State, where eligible lands are available, not less than quarterly, and more frequently if the Secretary determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty of 12.5 per centum in amount or value of the production removed or sold from the lease.".

(b) Section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended to read as follows:

"(1) If the lands to be leased are (A) lands available for leasing under subpart 3111 of title 43 of the Code of Federal Regulations on the date of enactment of the Federal Onshore Oil and Gas Leasing Act of 1987, or (B) lands which were offered for lease under subsection (b)(1) of this section and no bids were received or only bids below $1 per acre were received, the person first making application who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding. A lease shall be conditioned upon the payment of a royalty of 12.5 per centum in amount or value of the production removed or sold from the lease.

"(2) Lands in a lease for oil or gas, except for leases issued under subsection (b)(2) of this section, which lease terminates, expires, is canceled or is relinquished, shall again be available for leasing competitively in accordance with subsection (b)(1) within ninety days.".

(c) Section 17(d) of the Act of February 25, 1920 (30 U.S.C. 226(d)), is amended to read as follows:

"(d) All leases issued under this section shall be conditioned upon payment by the lessee of a rental of $1 per acre for each year of the lease. Each year's lease rental shall be paid in advance. A minimum royalty of $1 per acre in lieu of rental shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased.".

(d) The first sentence of section 17(e) of the Act of February 25, 1920 (30 U.S.C. 226(e)), is amended to read as follows:

"(e) Leases issued under this section shall be for a primary term of ten years.".

SEC. 3. The third sentence of section 30(a) of the Act of February 25, 1920 (30 U.S.C. 187(a)), is amended to read as follows: "The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: *Provided, however,* That the Secretary may, in his discretion, disapprove an assignment (1) of a separate zone or deposit under any lease, (2) of a part of a legal subdivision, or (3) of less than six hundred and forty acres outside Alaska or of less than two thousand five hundred and sixty acres within Alaska, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas. Requests for approval of assignment or sublease shall be processed promptly by the Secretary.".

SEC. 4. Section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148) is amended as follows:

(1) Subsections (c) and (e) (16 U.S.C. 3148 (c) and (e)) are deleted in their entirety.

(2) The second sentence of section 1008(d) (16 U.S.C. 3148(d)) is deleted.

(3) Subsections (d) and (f) through (i) (16 U.S.C. 3148 (d) and (f) through (i)) are renumbered subsections (c) through (g) respectively.

Sec. 5. (a) Notwithstanding any other provision of this Act, all noncompetitive oil and gas lease applications and competitive oil and gas bids pending on June 15, 1987, shall be processed, and leases shall be issued under the provisions of the Act of February 25, 1920 (30 U.S.C. 181 et seq.), as in effect before its amendment by this Act, except where the issuance of any such lease would not be lawful under such provisions or other applicable law.

(b) Except as provided in subsection (a) of this section, all oil and gas leasing pursuant to the Act of February 25, 1920 (30 U.S.C. 181 et seq.), after the date of enactment of this Act shall be conducted in accordance with the provisions of this Act.

Sec. 6. The Act of February 25, 1920 (30 U.S.C. 181 et seq.), is amended by inserted after section 40 the following new section:

"Sec. 41. (a) Any person shall be liable under the standards set forth in subsections (c) and (d) of this section if that person misrepresents to the public by any means of communication the following:

"(1) The value or potential value of any lease or portion thereof issued under this Act;

"(2) the value or potential value of any lease or portion thereof to be issued under this Act;

"(3) the value or potential value of any land available for leasing under this Act;

"(4) the availability of any land for leasing under this Act;

"(5) the ability of the person to obtain leases under this Act on his or her own behalf or on behalf of any other person; or

"(6) the provisions of this Act and its implementing regulations.

"(b) Any person who organizes, or participates in, any scheme, arrangement, plan, or agreement to circumvent the provisions of this Act or its implementing regulations shall be liable under the provisions of this section.

"(c) The Attorney General shall institute against any person who, given the nature of the intended recipient of the communication, knew or should have known he or she was violating subsection (a) or (b) of this section, a civil action, in the district court of the United States for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but not limited to, a prohibition from participation in exploration, leasing, or development of any Federal mineral, or both.

"(d) Any person who knowingly and willfully violates the provisions of this section shall, upon conviction, be punished by a fine of not more than $500,000 for each violation or by imprisonment for not more than five years, or both.

"(e)(1) Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee, or agent of such corporation or entity who authorized, ordered, or carried out the proscribed activity shall be subject to the same action.

"(2) Whenever any officer, employee, or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action, unless it is shown that the officer, employee, or agent was acting without the knowledge or consent of the corporation or other entity.

"(f) The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties, fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines, and imprisonment afforded by any other law or regulation.

"(g)(1) A State may commence a civil action under subsection (c) of this section against any person conducting activity within the State in violation of this section. Civil actions brought by a State shall only be brought in the United States district court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) of this section.

"(2) This State shall notify the Attorney General of the United States of any civil action filed by the State under this subsection within thirty days of filing of the action.

"(3) Any civil penalties recovered by a State under this subsection shall be retained by the State and may be expended in such manner and for such purposes as the State deems appropriate. If a civil action is jointly brought by the Attorney General and a State, by more than one State or by the Attorney General and more than one State, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action in accordance with a written agreement entered into prior to the filing of the action.

"(4) Nothing in this section shall deprive a State of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section.".

SEC. 7. The Act of February 25, 1920 (30 U.S.C. 181 et seq.), is amended by adding at the end thereof the following new section:

"SEC. 43. Actions taken by the Secretary of the Interior to develop regulations and procedures for a competitive oil and gas leasing program or to hold particular lease sales shall not be subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969. Nothing in this section shall be considered as affecting the application of section 102 of the National Environmental Policy Act of 1969 to the proposed inclusion of any lands in a lease parcel or subsequent phases of oil and gas development.".

STATEMENT OF HON. DALE BUMPERS, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator **Bumpers**. Mr. Chairman, I have a statement which I ask unanimous consent be inserted in the record.

Let me just say that S. 66, for the purposes of the record, is a refined version of a bill I have been trying to get passed since 1979. I feel just as strongly about this now as I did then.

But I want to say, number one, this bill, in my opinion, meets the test of the public interest, which is well served by S. 66. Number two, it certainly will not serve as any deterrent to the development of oil and gas lands in the country.

There would be no down side, so far as those two things are concerned. And I think that is one of the reasons the Bureau of Land Management has agreed that this is a good approach.

Number two, right now we lease 5 percent of all the Federal lands in this country, that is the lands that are available for leasing. We lease 5 percent of the lands on a competitive basis and 95 percent on a non-competitive basis.

My bill, which would require a $20 minimum bid in order for lands to be let competitively, would increase the amount of lands being leased competitively from 5 percent to 20 percent.

The reason being that much of this land will not bring $20 per acre on a competitive bid. If it does not bring at least $20 on a competitive bid then it is going to be available on a non-competitive basis.

You can lease it in the over-the-counter market, on a first come, first served basis. Or you can lease it through the lottery. As repugnant as the lottery is to me, and as much as I would like to get rid of it, I have agreed to this aspect of S. 66.

All I want to make sure is that valuable lands that have the potential for development are let on a competitive basis and that the people of this country get fair market value for their lands.

Number three, S. 66 eliminates the most troublesome aspect of the present system, and that is the known geological structure test. God in heaven could not possibly read the language defining a known geological structure and tell us with any degree of precision what it means. It is just an absolute outrage that we even refer to a KGS to define lands subject to competitive bidding.

Fourth, I am concerned about my state, as I know the other Senators of this committee are concerned about their states, and they are the ones who have been taking a shellacking because of this outrageous system.

Most of you know that because some of us squealed like a pig under a gate about the Chaffee lease down in Arkansas, a lawsuit over leases covering 33,000 acres had to go to the Supreme Court, to get the Supreme Court to rule that that land should have been let competitively.

The Fort Chaffee situation will show you how outrageous the system was. Here was 75,000 acres surrounded by 500 gas wells, which never had been leased because it could not be leased. It was on a military reservation and there was an absolute prohibition against leasing military reservations until the 1970's.

But because there were no gas wells inside the reservation, the Department of the Interior said it was not an known geological structure, even though, as I say, there are 500 gas wells circling the place.

And that is the kind of result we have been getting with the KGS definition and that is the reason BLM wants to get rid of it just as badly as I do.

Most of you know that when they leased, not the 33,000 acres that went for $1 an acre, but when they leased the 24,000 acres adjoining it in a competitive sale, they brought an average of $1,705 an acre or $43 million for lands under which a noncompetitive lease would have brought $24,000.

So I want my state, which got half of that $43 million, I want my state to get half of the bonus bids on all of these other competitive leases. We have got hundreds of thousands of valuable acres in my state that, under the existing KGS system would nobody not be leased competitively.

We have been leasing the Ouachita National Forest for $1 an acre and lands across the fence, across the fence, bring $300 an acre. Now that is not the public interest. Nobody can argue that it is.

Fifthly, S. 66 will help to eliminate all these filing service corporations that are openly defrauding the American people in an unbelievable way. The lottery has been an invitation to fraud.

I have got a list of all these service corporations, and I will insert some of them in the record, showing how these people send out literature all over the United States, saying, send us X number of dollars, we have got this red-hot property that BLM is putting up for lease, and if you would like a chance to get rich as Rockefeller, some of them say, rich as Exxon, some of them say.

But all those ads, you have seen them, that say, if you want to be rich, if you want to make it big like Exxon, send us X number of dollars and we will put your name in the pot. And what they do is, you send them $125 and all they do is put your name and address on a lease application and send it to BLM with a check for $75. They put $50 in their pocket. And that is one of the better operations.

The point I want to make is, it is these people who are making the money off these leases. The increased money that would come into the Federal treasury and into the state treasuries under my bill is simply money that is now going to those filing services and other entities who have no intention of actually exploring for oil and gas.

It is not an increased burden on the oil and gas industry. I promise you, it is not an increased burden on the independents or the majors or anybody else. All it does is put a bunch of fly-by-night operators out of business who are now the intermediaries between people who are gullible and sending them money, and BLM. And this money would go into the treasury. That is really what it amounts to.

And finally, let me say, Mr. Chairman, CBO says that this would produce $27 million in increased Federal revenues. Actually, last year, CBO said that this would produce $100 million more a year, and $50 million of that would go to the states, and $30 million would be the net increase to the United States treasury.

They have lowered that figure somewhat under their current estimates. I think $27 million is what they say now, is what it would produce in 1989 anyway.

But I can tell you that the Budget Committee has already assumed the passage of this bill and has made room for $30 million additional revenue, which they anticipate this would bring in in 1988.

For all of those reasons and hundreds more, I strongly hope that this committee will get down to business and mark this bill up. And I want to thank the Subcommittee Chairman. I know that the Chairman has troubles with this whole thing.

But he has come a long way, and I appreciate very much him holding this hearing today so we can get this on the calendar and get it marked up. Thank you, Mr. Chairman.

[The prepared statements of Senator Bumpers and Senator Johnston follow:]

STATEMENT OF SENATOR DALE BUMPERS

MR. CHAIRMAN, I AM PLEASED TO BE ABLE TO JOIN YOUR SUBCOMMITTEE TO HEAR TESTIMONY ON S. 66 AND S. 1388, OUR BILLS ON THE ONSHORE OIL AND GAS LEASING SYSTEM. I APPRECIATE YOUR INTEREST IN THIS IMPORTANT ISSUE BECAUSE IT ILLUSTRATES WHAT I BELIEVE IS A GROWING CONSENSUS IN THE CONGRESS THAT THE CURRENT SYSTEM NEEDS TO BE CHANGED. YOU AND I BOTH WANT A SYSTEM WHICH ENCOURAGES OIL AND GAS DEVELOPMENT, ENSURES A FAIR RETURN TO THE PUBLIC FOR ITS RESOURCES AND WHICH HAS INTEGRITY AND STABILITY. I LOOK FORWARD TO WORKING WITH YOU TO DEVELOP THE BEST LEASING BILL POSSIBLE THIS YEAR.

ON JANUARY 6TH, I INTRODUCED S. 66, THE FEDERAL ONSHORE COMPETITIVE OIL AND GAS LEASING ACT OF 1987. I HAVE LONG FOUGHT FOR THE REFORM OF OUR CURRENT LEASING SYSTEM, WHICH I BELIEVE IS OUTMODED, SUSCEPTIBLE TO FRAUD AND MANIPULATION, AND NOT DESIGNED TO PROVIDE THE GOVERNMENT WITH A FAIR RETURN.

THE MOST EGREGIOUS EXAMPLES OF THE GOVERNMENT RECEIVING LESS THAN FAIR MARKET VALUE OCCURRED AT FORT CHAFFEE,ARKANSAS AND AMOS DRAW, WYOMING. IN 1979,THE INTERIOR DEPARTMENT ISSUED NONCOMPETITIVE LEASES ON 33,000 ACRES NEAR KNOWN GAS PRODUCING WELLS AT FORT CHAFFEE FOR $1 ANACRE. ARKLA GAS SUED TO SET THE LEASES ASIDE, CLAIMING THAT THEY WERE OVER A KGS AND UNDER THE

LAW SHOULD HAVE BEEN LEASED COMPETITIVELY. THE DISTRICT COURT AGREED, RULING THAT THE INTERIOR DEPARTMENT'S DECISION TO LEASE THE AREA NON-COMPETITIVELY WAS ARBITRARY. THE FOLLOWING YEAR, 24,000 ACRES OF ADJOINING LANDS WERE LEASED COMPETITIVELY FOR $1,705 PER ACRE. SO,INSTEAD OF RECEIVING $24 THOUSAND FOR THESE LEASES, THE FEDERAL GOVERNMENT RECEIVED $43 MILLION, HALF OF WHICH WAS SHARED WITH THE STATE. IN THE AMOS DRAW INCIDENT, 18 TRACTS LOCATED NEXT TO A PRODUCING AREA WERE LEASED IN THE LOTTERY FOR $13,000 IN RENTAL FEES AND $1.2 MILLION IN FILING FEES. WITHIN 6 WEEKS, THE LOTTERY WINNERS SOLD THEIR LEASE RIGHTS FOR A PRICE ESTIMATED AT BETWEEN $50 AND $100 MILLION.

MR. CHAIRMAN, MANY OF THE OTHER PROBLEMS WITH THE PRESENT SYSTEM ARE DISCUSSED IN MY INTRODUCTORY FLOOR STATEMENT. WITH YOUR PERMISSION, I WOULD LIKE TO HAVE A COPY OF MY STATEMENT AND A SECTION-BY-SECTION ANALYSIS OF S.66 INCLUDED IN THIS HEARING RECORD.

DURING THE 99TH CONGRESS, I INTRODUCED LEGISLATION SIMILAR TO S. 66, WHICH WAS REPORTED FAVORABLY BY THE ENERGY AND NATURAL RESOURCES COMMITTEE AND PASSED THE SENATE BY UNANIMOUS CONSENT. CONGRESS ADJOURNED, HOWEVER, BEFORE THE HOUSE OF REPRESENTATIVES WAS ABLE TO ACT ON THE SENATE-PASSED BILL.

REGARDING THAT LEGISLATION, THE SECRETARY OF THE INTERIOR WROTE TO MEMBERS OF THE ENERGY AND NATURAL RESOURCES COMMITTEE ON JULY 30, 1986 -

> ALL THE GOALS OF A FORWARD-THINKING LEASING PROGRAM ARE MET BY THIS LEGISLATION; NAMELY, IT ENCOURAGES EXPLORATION AND DEVELOPMENT, IT ENSURES AN ADEQUATE RETURN TO THE PUBLIC, IT CAN BE ADMINISTERED AND AT LOW COST, AND IT HAS INTEGRITY. AT A TIME WHEN THE FUTURE OF THE DOMESTIC OIL AND GAS INDUSTRY IS UNCERTAIN, THIS BILL WILL STRENGTHEN OUR DOMESTIC PETROLEUM CAPABILITY BY BRINGING STABILITY AND PREDICTABILITY TO OUR FEDERAL ONSHORE OIL AND GAS LEASING PROGRAM.

THE ADMINSTRATION HAS AGAIN ENDORSED MY BILL THIS YEAR AS I ASSUME DIRECTOR BURFORD WILL DISCUSS IN HIS TESTIMONY.

THE FEDERAL ONSHORE COMPETITIVE OIL AND GAS LEASING ACT REPRESENTS A REASONABLE COMPROMISE BETWEEN AN ALL-COMPETITIVE SYSTEM, WHICH I HAVE CHAMPIONED SINCE 1979, AND THE CURRENT SYSTEM, UNDER WHICH LESS THAN FIVE PERCENT OF ALL ONSHORE LEASES ARE OFFERED COMPETITIVELY. UNDER MY BILL, ALL FEDERAL LANDS SUBJECT TO OIL AND GAS LEASING WOULD FIRST BE OFFERED FOR COMPETITIVE BIDDING. A MINIMUM BID OF AT LEAST $20 PER ACRE WOULD BE REQUIRED. PARCELS RECEIVING AT LEAST ONE BID OF $20 OR HIGHER WOULD BE LEASED TO THE HIGHEST BIDDER. PARCELS RECEIVING NO BIDS OR BIDS BELOW THE MINIMUM WOULD THEN BE AVAILABLE ON A NONCOMPETITIVE BASIS FOR ONE YEAR. AFTER THE ONE YEAR PERIOD, THE CYCLE BEGINS AGAIN. APPROXIMATELY 15 TO 20 PERCENT OF ONSHORE LEASES WOULD BE END UP BEING LEASED COMPETITIVELY UNDER MY BILL, ACCORDING TO INTERIOR DEPARTMENT ESTIMATES. HOWEVER, ALL LANDS WOULD BE SUBJECT TO AN INITIAL COMPETITIVE TEST UNDER S.66.

THE PRIMARY VIRTUE OF THIS TWO-TIERED APPROACH IS THAT IT ELIMINATES THE USE OF THE ANTIQUATED AND UNWORKABLE KGS (KNOWN GEOLOGIC STRUCTURE) TEST AS THE DETERMINANT OF ELIGIBILITY FOR COMPETITIVE LEASING AND SUBSTITUTES A MARKET-BASED TEST. THE NONCOMPETITIVE SIMULTANEOUS FILING (LOTTERY) SYSTEM AND THE OVER-THE-COUNTER SYSTEM ARE PRESERVED FOR LANDS WHICH THE MARKET HAS DETERMINED TO BE WORTH LESS THAN $20 AN ACRE.

IN ADDITION TO INCREASING COMPETITION FOR FEDERAL OIL AND GAS RESOURCES, S. 66 WOULD ENHANCE THE GOVERNMENT'S AUTHORITY TO COMBAT FRAUDULENT PRACTICES INVOLVING THE ONSHORE OIL AND GAS LEASING PROGRAM. IN VIEW OF THE HISTORY OF FRAUD PROBLEMS ASSOCIATED WITH THE LOTTERY SYSTEM AND OTHER ASPECTS OF THE ONSHORE LEASING PROGRAM, I CONSIDER THIS NEW AUTHORITY EXTREMELY IMPORTANT. THE USE OF A MINIMUM $20 BID IN THE COMPETITIVE BIDDING TIER WILL ALSO REDUCE THE INCENTIVE FOR SPECULATION IN THE LOTTERY BY PLACING A CEILING ON THE VALUE OF LANDS AVAILABLE FOR NONCOMPETITIVE LEASING.

THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL HAS BEEN VERY INTERESTED IN LEASING REFORM OVER THE YEARS - PRIMARILY BECAUSE OF THE INCIDENTS OF FILING SERVICE FRAUD WITHIN THE LOTTERY SYSTEM. UNFORTUNATELY, THEY WERE UNABLE TO TESTIFY AT TODAY'S

HEARING. THEY WILL BE SUBMITTING WRITTEN TESTIMONY HOWEVER, AND I HOPE THE RECORD CAN REMAIN OPEN TO ACCOMODATE THEM.

LAST YEAR, THE CONGRESSIONAL BUDGET OFFICE ESTIMATED THAT ENACTING THE LEASING REFORMS CONTAINED IN S. 66 WOULD INCREASE GROSS RECEIPTS TO THE TREASURY FROM BONUS BIDS BY ABOUT $100 MILLION IN THE FIRST FULL YEAR OF OPERATION. THE STATES WOULD RECIVE ONE-HALF OF THESE RECEIPTS OR $50 MILLION. NET RECEIPTS TO THE FEDERAL GOVERNMENT WOULD BE ABOUT $30 MILLION BECAUSE RECEIPTS FROM LOTTERY FILING FEES WOULD BE REDUCED.

IN SUMMARY, S. 66 WOULD ENACT SEVERAL LONG OVERDUE CHANGES TO THE FEDERAL GOVERNMENT'S ONSHORE LEASING LAWS. THESE REFORMS WILL ESTABLISH A LEASING SYSTEM WHICH IS FAIR AND WORKABLE AND WILL ENHANCE OUR DOMESTIC ENERGY SITUATION. I HAVE SAID THAT S. 66 IS LESS THAN "HALF A LOAF" FOR ME AND I AM MORE THAN WILLING TO TALK ABOUT WAYS TO IMPROVE THE LEGISLATION. I HOPE THAT THIS HEARING WILL PROVIDE THE COMMITTEE WITH SUBSTANTIVE AND CONSTRUCTIVE COMMENTS ON HOW TO DESIGN A LEASING PROGRAM THAT WILL ACHIEVE THE GOALS I HAVE DISCUSSED -- ENCOURAGING OIL AND GAS LEASING; ENSURING A FAIR RETURN TO THE PUBLIC; AND ENSURING THAT THE PROCESS HAS INTEGRITY AND STABILITY.

THANK YOU MR. CHAIRMAN.

Continuation of Senate Proceedings of January 6, 1987, Issue No. 1; and Proceedings of January 8, 1987, Issue No. 3.

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PROCEEDINGS AND DEBATES OF THE *100th* CONGRESS, FIRST SESSION

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Senate

The Senate was not in session today. Its next meeting will be held on Monday, January 12, 1987, at 12 noon.

By Mr. BUMPERS:

S. 66. A bill to provide for competitive leasing for onshore oil and gas; to the Committee on Energy and Natural Resources.

COMPETITIVE OIL AND GAS LEASING ACT

Mr. BUMPERS. Mr. President, I rise today to introduce for the fifth consecutive Congress a bill to reform the Federal onshore oil and gas leasing system.

As every Member of this body knows, I have long fought for this change in our current leasing system, which I believe is outmoded, susceptible to fraud and manipulation, and not designed to provide the Government with a fair return. The Federal Onshore Competitive Oil and Gas Leasing Act of 1987 would enact several long overdue changes to the Federal onshore leasing laws. These reforms will establish a leasing system which is fair and workable and will enhance our domestic energy situation. I urge my colleagues to support this bill.

PROBLEMS WITH THE CURRENT LEASING SYSTEM

Mr. President, I believe that reform of the Federal Government's onshore leasing system is absolutely necessary. The current system serves neither the public nor the oil and gas industry's best interests. For the edification of my colleagues who may not have heard this speech before, and to refresh the memories of those who have, I will attempt to summarize the problems with the present Federal leasing system for oil and gas.

Under existing law—the Mineral Leasing Act of 1920—only those lands with known oil and gas potential—those overlying a known geological structure of a producing oil or gas field [KGS]—may be leased on a competitive basis. Because of this restrictive test, less than 5 percent of all onshore leases are now offered competitively. Oil and gas leases not within a KGS must be leased noncompetitively—for a small filing fee and $1 an acre.

In addition to the restrictive nature of the KGS test, it is exceedingly difficult to apply with any degree of certainly. The distinguished Senator from Wyoming [Senator WALLOP] has called the KGS system "witchcraft, at best" and I emphatically agree. Currently, the Bureau of Land Management does not profess to make a technical or professional decision on whether lands overlie a KGS. They simply determine that if a tract is within a mile of producing acreage, it is presumed to be a KGS. Anything further than 1 mile from a producing tract is deemed not to be KGS lands.

The Bureau of Land Management has often made these determinations without current information on producing wells and complete, dependable geological data. These problems have been further complicated by staffing and communications problems within BLM. As a result of errors in BLM's KGS determination process, several leases, determined by BLM not to be within a KGS, have been leased on a noncompetitive basis, even though there was a high degree of competitive interest in the leases. In these instances, the Federal Government received far less than fair market value. The most egregious examples of these occurrences were at Fort Chaffee, AR and Amos Draw, WY.

In 1979 the Interior Department issued noncompetitive leases on 33,000 acres near known gas producing wells at Fort Chaffee for $1 an acre. Arkla gas used to set the leases aside, claiming that they were over a KGS and under the law, should have been leased competitively. The district court agreed, ruling that the Interior Department's decision to lease the area noncompetitively was arbitrary. This decision has been upheld on appeal. In 1980, 24,000 acres of adjoining lands were leased competitively for $1,705 per acre. So instead of the Treasury receiving $24,000 for the leases, it received $43 million, half of which was returned to the State.

More recently, 18 tracts in the Amos Draw region of Wyoming located adjacent to producing lands were leased noncompetitively. The Government received $13,000 in rental fees and $1.2 million in lottery filing for the tracts. Within 6 weeks, the lottery winners sold their lease right for fees estimated at $50 to $100 million. The Amos Draw scandal led to a suspension of the Onshore Leasing Program for 10 months from 1983 to 1984.

In 1984, the National Academy of Sciences began a thorough study of the KGS Program. The NAS report, issued earlier this year, makes several proposals for improving the program. However, the Academy's bottom-line conclusion was that its proposals "at best can lessen the criticism of the KGS Program—and that—that the nature of both oil and gas exploration and existing law preclude resolving the issues to everyone's satisfaction. Uncertainty and individual judgment will always exist even if every piece of data were required by the BLM. Some errors in classification will always occur." "Known Geological Structures Under the Mineral Leasing Act: Interperting and Applying the Term Known Geologic Structure of a Producing Oil and Gas Field," National Academy Press, 1986, p. 82.

These findings support my belief that the existing competitive leasing system is anachronistic, wasteful and must be replaced. The committee bill would replace the KGS determination process with a neutral market based test. This change will help to assure that the Federal Government receives market value for its leases and will streamline the administration of the leasing program.

An equally serious problem associated with the current leasing system is the potential for fraud and abuse within the noncompetitive system, particularly within the simultaneous filing—(simo)—for lottery system. In 1980, evidence of multiple filings by single applicants in the lottery led to a 3-month hiatus in the program and remedial rule changes. Shortly thereafter filing services for the lottery began to spring up in large numbers. These services recruit clients and then, for a fee, file lottery applications in their names. These services commonly misrepresent the value of the tracts to be offered for lease and the filer's changes of winning a tract. A number of filing services charge service fees greatly in excess of actual filing fees. Some even claim to "guarantee" their clients will be winners.

At one time there were over 500 filing services operating in this country and State and Federal officials estimate that the public has been defrauded of between $200 and $300 million each year by these companies. At present, 44 filing services operate nationwide. This drastic reduction is due in part to the increase in the filing fee to $75 and the required prepayment of the first year's rental payment of $1 per acre. The reduction also reflects the increased investigative efforts of State governments, the Departments of Justice and the Federal Trade Commission to halt fraudulent activities.

Nevertheless, the unscrupulous are ingenious and indefatigable and other types of fraudulent activities have been introduced into the system. One example involves the so-called "40 acre merchants" who break up leases, which are typically over 1,000 acres in size, into 40 acre parcels and sell them to the unsuspecting public. Another fraud involves misrepresentation of the value of lands which were leased noncompetitively—for example tracts in Alaska with no known potential for oil and gas were sold as "valuable oil lands within sight of the Trans-Alaska pipeline."

My bill enhances the Government's authority to combat fraudulent practices and provides the Secretary of the interior with the authority to disapprove lease assignments of less than 640 acres. The requirement that all lands be subject to a competitive test before being offered noncompetitively should also reduce the lottery's attraction for speculators because lands available in the lottery would be presumed to be worth less than $20 an acre.

BACKGROUND AND SUMMARY OF LEGISLATION

For several years I have introduced legislation to establish an all-competitive leasing system for onshore oil and gas resources on Federal lands. I have championed the all-competitive approach here in the Senate for the past 7 years and I would still prefer to see an all-competitive system. However, in the hopes of achieving a consensus regarding leasing reform I introduced S. 2439 in May of last year. It is this legislation, with a few modifications, which the Energy Committee considered and reported to the Senate by a vote of 15 to 2. After further modification, the legislation passed the Senate at the end of the 99th Congress, but failed to be considered by the House of Representatives. The bill I am introducing today is similar to the committee-reported version of S. 2439, with a few technical modifications. The legislation creates a two-tiered system for onshore oil and gas leasing which can be summarized as follows:

All Federal lands subject to oil and gas leasing would be offered first for competitive bidding.

A minimum bid of $20 per acre would be required in the competitive tier. Parcels receiving at least one bid of $20 or higher would be leased to the highest bidder.

Parcels receiving no bids or bids below the minimum would then be available for leasing in the second—noncompetitive—tier for 1 year.

If these parcels are not leased within the year, they again become available only under the competitive system.

The royalty payment under this proposal would be fixed at 12½ percent. Other lease terms, such as rental rates and the length of the lease remain as in existing law. The maximum lease size would be 2,560 acres, except in Alaska.

The primary virtue of this legislation, in my view, is that it eliminates the use of known geologic structures [KGS] as the determinant of eligibility for competitive leasing and substitutes a market based price test. The lottery system—for lands which have been leased previously—and the over-the-counter system—for lands which have never been leased—are preserved for those parcels which the market has determined to be worth less than $20 an acre. The Government's authority to combat fradulent practices involving the onshore oil and gas leasing system would be enhanced under the committee bill.

The Secretary would have new authority to disapprove lease assignments of less than 640 acres in order to prevent "40 acre merchants" from marketing small parts of leases to the unsuspecting public.

Specific authority to combat fraud, including civil and criminal penalties, is provided for regulatory and enforcement agencies.

The Congressional Budget Office estimated last year that passage of this legislation would increase gross Federal receipts from bonus bids by approximately $50 million in fiscal year 1987 and by about $100 million per year over the fiscal years 1988 through 1991. Net receipts to the Government would be $15 million for 1987 and $30 million, because half of the receipts go to the States and receipts for filing fees for noncompetitive leases would be slightly reduced.

Mr. President, this legislation does not provide all I would wish for in a leasing system for our Federal oil and gas resources. It is less than half a loaf for me. But I think it is a workable bill and a fair compromise between diverse interests. I urge the Senate to adopt this legislation and look forward to working with our colleagues in the House on this important issue. I hope that the 100th Congress will finally enact the leasing reform legislation which we have needed for so long.

I ask unanimous consent that a copy of the bill and a section-by-section analysis be printed in the RECORD immediately after my statement.

There being no objection the material was ordered to be printed in the RECORD, as follows:

S. 66

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Onshore Competitive Oil and Gas Leasing Act of 1987."

SEC. 2.(a) Section 17(b)(1) of the Act of February 25, 1920, (30 U.S.C. 226(b)(1)), is amended to read as follows:

"(b)(1) All lands to be leased which are not subject to leasing under paragraph (2) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than two thousand five hundred and sixty acres, except in Alaska, where units shall be not more than five thousand one hundred and twenty acres, which shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding. Lease sales shall be held for each State, where appropriate, not less than quarterly, and more frequently if the Secretary determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty of 12.5 per centum in amount or value of the production removed or sold from the lease. The Secretary shall establish by regulation a minimum acceptable price which shall be the same for all leases and which is at least $20 per acre. The minimum acceptable price shall be established without evaluation of the lands proposed for lease. The Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater than the minimum acceptable price. All bids for less than the minimum acceptable price shall be rejected. Lands for which no bids are received or for which the highest bid is less than the minimum acceptable price shall become available for leasing under subsection (c) of this section for a period set by the Secretary not to exceed one year after the lease sale.".

(b) The first sentence of section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)) is amended to read as follows: "(1) If the lands to be leased are not leased under subsection (b)(1) of this section or are not subject to competitive leasing under subsection (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding.".

(c) Section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended by adding a paragraph to read as follows:

"(c)(2)(A) Lands (i) which were posted for sale under subsection (b)(1) of this section but for which no bids were received or for which the highest bid was less than the minimum acceptable price established by the Secretary and (ii) for which, at the end of the period established by the Secretary under subsection (b)(1) of this section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall be available for leasing only in accordance with subsection (b)(1) of this section.

"(B) The land in any lease which is issued under paragraph (1) of this subsection or under subsection (b)(1) of this section which lease terminates, expires, is canceled or is relinquished shall again be available for leasing only in accordance with subsection (b)(1) of this section.".

(d) The third sentence of section 17(d) of the Act of February 25, 1920 (30 U.S.C. 226(d)), is amended ot read as follows: "A minimum royalty of not less than $1 per acre in lieu of rental shall be payable at the expiration of each lease year beginning on or after a discovery of oil and gas in paying quantities in the lands leased.".

Sec. 3. The third sentence of section 30(a) of the Act of February 25, 1920 (30 U.S.C. 187(a)) is amended to read as follows: "The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bonds: *Provided, however,* That the Secretary may, in his discretion, disapprove an assignment (1) of a separate zone of deposit under any lease, (2) of a part of a legal subdivision, or (3) of less than six hundred and forty acres outside Alaska or of less than two thousand five hundred and sixty acres within Alaska, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas. Requests for approval of assignment or sublease shall be processed promptly by the Secretary.".

Sec. 4. The first sentence of section 31(b) of the Act of February 25, 1920 (30 U.S.C 188(b)) is amended to read as follows:

"(b) Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the Interior after thirty days' notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or unit plan or communitization agreement under section 17(j) of this Act which contains a well capable of production of unitized substances in paying quantities.".

Sec. 5. Section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148) is amended as follows:

(1) Subsections (c) and (e) (16 U.S.C. 3148 (c) and (e)) are deleted in their entirety.

(2) The second sentence of section 1008(d) (16 U.S.C. 3148(d)) is deleted.

(3) Subsections (d) and (f) through (i) (16 U.S.C. 3148 (d) and (f) through (i)) are renumbered subsections (c) through (g) respectively.

Sec. 6. (a) Notwithstanding any other provision of this Act and except as provided in paragraph (d) of this section, all noncompetitive oil and gas lease applications filed pursuant to regulations governing the simultaneous oil and gas leasing system (43 CFR subpart 3112) and pending on the date of enactment of this Act shall be processed, and leases shall be issued under the provisions of the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this Act, except where the issuance of any such lease would not be lawful under such provisions of other applicable law. If the date of enactment of this Act occurs during a simultaneous filing period prescribed by the regulations of the Department of the Interior, all applications filed during that period shall be considered filed prior to the date of enactment.

(b) Notwithstanding any other provision of this Act and except as provided in paragraph (d) of this section, all noncompetitive oil and gas lease offers filed pursuant to regulations governing the over-the-counter leasing system (43 CFR subpart 3111) prior to January 1, 1987, shall be proposed, and leases shall be issued under the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this Act, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If the Secretary posts tracts for competitive sale containing lands in an over-the-counter noncompetitive lease offer filed between January 1, 1987, and the date of enactment of this Act, and if any such tracts do not receive bids greater than or equal to the minimum acceptable price established by the Secretary at the sale, the Secretary shall reinstate the noncompetitive lease offers for these tracts and shall issue leases in accordance with section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)).

(c) Notwithstanding any other provision of this Act, all competitive oil and gas lease bids filed pursuant to applicable regulations (43 CFR subpart 3120) pending on the date of enactment of this Act shall be processed, the high bid for each tract shall be accepted without further evaluation of the value of the tract, and leases shall be issued under the Act of February 20, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this Act, except where the issuance of any such lease would not be lawful under such provisions or other applicable law.

(d) No competitive lease applications or offers pending on the date of enactment of this Act for lands within the Shawnee National Forest, Illinois; the Ouachita National Forest, Arkansas; Fort Chaffee, Arkansas; or Eglin Air force Base, Florida; shall be processed until these lands are posted for competitive bidding in accordance with section 2 of this Act. If any such tract receives no bid from a responsible qualified bidder then the noncompetitive applications or offers pending for such a tract shall be reinstated and noncompetitive leases issued under the Act of February 20, 1920 (30 U.S.C. 181 *et. seq.*), as in effect before its amendment by this Act, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If competitive leases are issued for any such tract, then the pending noncompetitive application or offer shall be rejected.

Sec. 7(a) Except as provided in section 6 of this Act, all oil and gas leasing pursuant to the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), after the date of enactment of this Act shall be conducted in accordance with the provisions of this Act.

(b) The Secretary shall issue final regulations within one hundred and eighty days after the date of enactment of this Act. The regulations shall be effective when published in the Federal Register.

(c)(1) Prior to issuing regulations implementing this Act, the Secretary shall hold at least one competitive lease sale pursuant to Section 2 of this Act. Sale procedures shall be established in the notice of sale. This sale shall include tracts which, but for the enactment of this Act, would have been posted for the filing of simultaneous oil and gas lease applications pursuant to applicable regulations (43 CFR subpart 3112). The Secretary may also include in the sale tracts which would otherwise have been posted for competitive sale pursuant to applicable regulations (43 CFR subpart 3120) and tracts which received over-the-counter noncompetitive oil and gas lease offers pursuant to applicable regulations (43 CFR subpart 3111) between January 1, 1987, and the date of enactment of this Act. The Secretary may hold additional sales if he considers it necessary prior to the issuance of final regulations pursuant to subsection (b) of this section.

(2) If tracts which would, but for the enactment of this Act, have been posted for filing of simultaneous applications do not receive bids of greater than or equal to the minimum acceptable price established by the Secretary at a competitive sale held under this section, they shall subsequently be posted for the filing of simultaneous applications provided the Secretary has not yet issued regulations under subsection (b) of this section.

(3) If no competitive or noncompetitive leases are issued for lands posted for sale as provided in paragraph (c) of this section, the Secretary shall lease such tracts in accordance with the regulations issued pursuant to paragraph (b) of this section.

SEC. 8. The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) is amended by adding at the end thereof the following new section:

"SEC. 43. Actions taken by the Secretary of the Interior to develop regulations and procedures for a competitive oil and gas leasing program or to hold particular lease sales shall not be subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969. Except as otherwise provided in this section, nothing in this Act shall be considered as affecting the application of section 102 of the National Environmental Policy Act of 1969."

SEC. 9. The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) is amended by inserting after section 40 the following new section:

"SEC. 41(a) Any person shall be liable under the standards set forth in subsections (c) and (d) of this section if that person misrepresents to the public by any means of communication the following:

"(1) The value or potential value of any lease or portion thereof issued under this Act;

"(2) the value or potential value of any lease or portion thereof to be issued by this Act;

"(3) the value or potential value of any land available for leasing under this Act;

"(4) the availability of any land for leasing under this Act;

"(5) the ability of the person to obtain leases under this Act on his or her own behalf or on behalf of any other person; or

"(6) the provisions of this Act and its implementing regulations.

"(b) Any person who organizes, or participates in, any scheme, arrangement, plan, or agreement to circumvent the provisions of this Act or its implementing regulations shall be liable under the provisions of this section.

"(c) The Attorney General shall institute against any person who, given the nature of the intended recipient of the communication, knew or should have known he or she violating subsection (a) or (b) of this section, a civil action, in the district court of the United States for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but not limited to, a prohibition from participating in exploration, leasing, or development of any federal mineral, or both.

"(d) Any person who knowingly and willfully violates the provisions of this section shall, upon conviction, be punished by a fine of not more than $500,000 for each violation or by imprisonment for not more than five years, or both.

"(e)(1) Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee, or agent of such corporation or entity who authorized, ordered, or carried out the proscribed activity shall be subject to the same action.

"(2) Whenever any officer, employee, or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action.

"(f) The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties, fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines and imprisonment afforded by any other law or regulation.

"(g)(1) A state may commence a civil action under subsection (c) of this section against any person conducting activity within the state in violation of this section. Civil actions brought by a state shall only be brought in the United States district court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) of this section.

"(2) This state shall notify the Attorney General of the United States of any civil action filed by the State under this subsection within thirty days of filing of the action.

"(3) Any civil penalties recovered by a state under this subsection shall be retained by the state and may be expended in such manner and for such purposes as the state deems appropriate. If a civil action is jointly brought by the Attorney General and a state, by more than one state or by the Attorney General and more than one state, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action in accordance with a written agreement entered into prior to the filing of the action.

"(4) Nothing in this section shall deprive a state of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section.".

SEC. 9. Section 35 of the Act of February

SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION

HEARING ON S. 1388 and S. 66

June 30, 1987

STATEMENT BY

Senator J. Bennett Johnston

Mr. Chairman, I want to thank you for holding these hearings today on this important issue. Given the current world-wide energy situation, it is more important than ever to ensure a steady supply of oil and gas from the most secure source possible - our own lands. Unfortunately, the federal onshore oil and gas leasing program has suffered recently from allegations of fraud and abuse which have undermined the program's effectiveness.

Both the lottery system and the method of designating known geological structures have been called into question. The current system has allowed, on the one hand, instances of leasing of valuable oil and gas lands noncompetitively for far below an equitable return to the taxpayer, and on the other hand, recent KGS designations so large that the geologic basis for the designation is highly questionable. These are problems that need to be addressed before the public and the industry can have full confidence in the program.

Last year the full Committee and the Senate passed legislation, sponsored by Senator Bumpers, dealing with this issue. Both of the bills before the Subcommittee today also address the problems in the program. This is an issue that needs to be resolved in a manner that restores the public's faith in the system and provides for a balanced, reliable leasing program for oil and gas development. I want to thank Senator Melcher and Senator Bumpers for all the time and attention they have devoted to searching for the solutions to these problems.

Senator **Melcher**. Senator Nickles?

Senator **Nickles**. I will pass.

Senator **Melcher**. Senator Bradley?

STATEMENT OF HON. BILL BRADLEY, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator **Bradley**. Thank you very much, Mr. Chairman. I think that this is an issue that Senator Bumpers has talked about and fought for for a number of years, and gotten the interest of a number of other Senators and their attention.

My particular interest in this bill is what will be the minimum bid, and there is a difference between S. 1388 and S. 66, about a difference between $1 and $20. I would be very interested to hear the arguments as to why one as opposed to the other.

I also want to make sure that we have done everything we can to avoid any potential fraudulent circumstance. Those would be my two concerns in looking at the bill.

Senator **Melcher**. Senator Hecht?

Senator **Hecht**. Nothing.

Senator **Melcher**. Senator Bingaman.

Senator **Bingaman**. I have a short statement that I will put in the record.

[The prepared statement of Senator Bingaman follows:]

Statement of Senator Jeff Bingaman
On-Shore Oil and Gas Leasing
June 30, 1987

I thank the Chairman for holding this hearing to receive testimony on legislation to reform the Mineral Lands Leasing Act of 1920.

I hope we can enact legislation that will restore integrity to the leasing system and allow us to move forward with oil and gas exploration.

The oil and gas industry is facing difficult times and I want to ensure that whatever action we take does not adversely impact efforts to revitalize the industry.

According to recent figures, only 763 drilling rigs are currently operating in the U.S. In comparable terms there are less rotary rigs active now than the World War II low of 805. The monthly seismic crews current, with only 166 crews working in May 1987, is at its lowest level since 1970. 1986 exploration and development out-lays are estimated to have been one-half of the 1985 level of $30 billion. Oil imports are nearly, 40 percent of total U.S. consumption, threatening our energy security.

In New Mexico, revenues generated by the industry showed a 25 percent drop in 1986. The total value of New Mexico's oil and gas activity has dropped 46 percent in the past year. Employment by the industry dropped from a low of 13,200 in 1985 to 9,000 in October of 1986. The average rig count in the State is well below last years average of 71.

Potential reform of the leasing act is an important issue to many of my constituents in New Mexico. I strongly support reform that will encourage new oil and gas development, ensure a fair return to the public, and which can be administered at a reasonable cost.

The current system has not proven effective in meeting the above goals. I hope the Congress is able to bring about effective reform. I look forward to the testimony of today's witnesses.

Senator **Melcher**. Our first witness will be the administration position as presented by Bob Burford, Director of the Bureau of Land Management.

STATEMENT OF ROBERT F. BURFORD, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. **Burford**. Thank you, Mr. Chairman.

Senator **Melcher**. You may summarize your statement, Bob. The entire statement will be made part of the record.

Mr. **Burford**. Yes, if I could request that it be entered in the record. I am suffering from a slight disability of my throat, which may be to the benefit of the committee, because I will not be able to read the entire statement.

I would like to comment, or perhaps second your comments on oil and gas exploration being deeply depressed. That is especially true in the lands in the West, where most of the Federal acreages lie.

You can pick up any newspaper in the West and find drilling rigs for sale at 10 cents on the dollar, and human interest stories about oil and gas companies going out of business, loss of jobs in many of the Western towns. It is generally a depressed area. It is with this in mind that any changes in the Mineral Leasing Act should be considered.

I am addressing S. 66 first, since it was the first bill introduced. It would subject all onshore Federal lands, including those in Alaska, to competitive leasing for oil and gas.

Following the availability for competitive bidding, the lands which do not receive a bonus bid at or above the per-acre level would become available for non-competitive leasing.

It would set the royalty rate at a flat 12.5 percent. It would give the Secretary of the Interior the discretion to disapprove assignments where the acreage involved is less than 640 acres outside of Alaska or 2,560 acres within the State of Alaska.

This is meant to put a stop to the so-called 40 acre merchants who lease sometimes over the counter areas within either Alaska or the lower 48, and then break them up into 40 acre tracts and sell them to unsuspecting people throughout the United States for $500 to $1,000 per acre, when anyone in the know knows that there is no chance of getting production off of those.

It would establish civil and criminal penalties for misrepresentations to the public concerning oil and gas leasing.

We think that the goals of a forward-thinking leasing program are met by S. 66. The bill encourages exploration and development, ensures an adequate return to the public, and can be administered at low cost.

Enactment of this bill would strengthen our domestic petroleum capability by bringing stability and predictability to the Federal onshore oil and gas leasing program.

Specific comments, on section 2, would direct the Secretary of the Interior to lease all lands to the highest responsible qualified bidder by oral bidding, as long as the highest bid equals or exceeds a bid price set by the Secretary, which is at least $20 per acre.

No tract evaluation shall be conducted in establishing a minimum price. We presume that this provision, taken with the sentence in section 2 of the bill, directing the Secretary to accept the highest bid from a responsible qualified bidder equal to or greater than the minimum acceptable bid, means that no tract evaluation would be conducted in order to accept the high bid. However, we recommend that this point be clarified in the bill.

Section 2 provides a one year period within which a person could apply for a lease on lands receiving no bids or bids below the per-acre bid price. We believe that this should be amended to a three year period because it would be a pretty strong administrative burden to recycle those tracts on a yearly basis. We think that a three year cycle will pick up the values which the bill is intended to address.

I spoke briefly of the section 3, on the legal subdivisions, of less than 640 acres or 2,560 acres in Alaska. So I will skip to section 6, which will "grandfather" lease applications pending at the time S. 66 is enacted.

In addition to lease applications being grandfathered, we believe that lands which are currently available for noncompetitive leasing but which have attracted no leasing interest should remain available for leasing under section 17(c) until January 1, 1991.

If land is managed by another agency, such as the Forest Service, BLM refers previously leased land to that agency for review before posting it for simultaneous filings. We would exclude land which has been referred but received no response.

This will avoid the possibility that there is no pending application on lands with leasing interest only because they are under review by a surface management agency other than the BLM.

Section 7 would require issuance of regulations within 180-days of enactment of the bill. We believe that that 180 day requirement will be very difficult to meet and suggest the bill be amended to make that 270 days.

Section 9 establishes civil and criminal penalties for misrepresentation of the public concerning oil and gas leasing. We understand the Department of Justice has some concerns that subsection (c) will limit prosecutorial discretion, and we leave it up to the Justice Department to work with you on that.

I think that there is a section 9 which is probably misnumbered as a technical matter. The section should be renumbered at this point, with each section renumbered one number higher. The second section should be deleted.

S. 66 would not allow any payments to the states under section 35 of the Mineral Leasing Act to be reduced by any administrative or other costs incurred by the United States.

As most of you know, this is an administration priority, and the bill reducing those costs or taking those costs out of the lease has been introduced at the request of the administration. I do not have high hopes for its passage. But nevertheless, it has been introduced.

Section 10 requires an annual report. We believe that this is unnecessary because we do not think that gives us the time to prepare a quality report. We would like to suggest one report within three years of enactment.

We think that one other thing should be added to this bill, which is a provision relating to interest in lands which will vest in the Federal government at some future time.

There is no one in this room, or very few anyway, who can remember back to the 1930s when the Bankhead-Jones Act took effect. And in that act, there were reservations of mineral rights to the people who owned that land, a 50-year reservation in most cases.

Those minerals are now vesting back into the United States government. Because centralized records were not kept of these conveyances, we do not know how many of the lands contain the future Federal mineral interest.

We do know that there are cases where the current owners of these interests have leased them to third parties, and in some cases these third parties are having to bid to retain rights, which they already had obtained from the former owners. They have built wells and recovery mechanisms. We believe it only fair that they be allowed to retain those.

S. 1388 is similar to S. 66 in several respects. It includes the provisions for criminal and civil penalties for persons and/or corporations who misrepresent values of lease or lands or the ability to obtain leases.

It gives the Secretary the authority to disapprove assignments or subleases and provides that section 102(2)(c) of NEPA shall not apply to actions taken by the Secretary to develop an oil and gas leasing program or to hold individual oil and gas lease sales.

Section 2(a) of S. 1388 would amend section 17(b)(1) of the Mineral Leasing Act to provide that all lands, except those available for over-the-counter (OTC) leasing on the date of enactment, shall be leased by competitive bidding.

This provision differs from S. 66 in that it provides for exemption from competitive leasing for an unlimited period of time for all lands which at the time of enactment are available for over-the-counter leasing. Correspondingly, there is no provision to exempt for a period of time a lease already exposed to competition.

The exemption from competition of current OTC lands and lands which fail to receive bids of $1 per acre until they are once again leased non-competitively may create problems for this system in the future, such as the present SIMO system.

At the present time, more than half of the current SIMO lands do not receive a single application. As lands become more valuable, as the price of oil works its way up, there may be some of these lands that will receive more than one bid, and we will need to institute either a lottery, as at present, under this bill, or some method of determining whose bid should be acepted. We prefer the approach reflected in the provisions of S. 66.

S. 1388 says lands which receive either no bids or bids below the dollar minimum shall be available for non-competitive leasing indefinitely, rather than for a specified period of time.

Again, we prefer the provisions of S. 66, but feel that the period of time should be set at three years. The low $1 minimum bid likely will eliminate the need for a computerized simultaneous leasing, although some instances will arise where selection among OTC applicants will need to be made.

This could result in a process which we expect will prove to be a great administrative burden.

The $1 per acre minimum bid makes it very easy for less than forthright individuals to obtain considerable amounts of land cheaply. They can then advertise this land as competitively won and assign 640-acre sections at $5 to $10 per acre without resorting to any fraudulent claims or smaller acreages.

Their ability to obtain the land necessitates their beginning the bidding at $1 and dropping out whenever anyone raises their bid.

Since many lands do not now warrant $1 per acre as evidenced by the large number of SIMO tracts receiving no applications, they should have little trouble amassing a sufficient land base to undertake such a venture, one which should not trigger the fraud or 40-acre merchant provisions of the bill.

We have some technical concerns with S. 1388, but believe these can all be corrected. Those are detailed in the remainder of this statement. Since they are technical, I would like to draw this statement to a close and ask for any questions. Thank you, Senator.

[The prepared statement of Mr. Burford follows:]

JUN 30 1987

STATEMENT OF ROBERT F. BURFORD, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE ON S. 66, A BILL "TO PROVIDE FOR COMPETITIVE LEASING FOR ONSHORE OIL AND GAS" AND S. 1388, A BILL "TO AMEND THE ACT OF FEBRUARY 25, 1920, TO REFORM FEDERAL ONSHORE OIL AND GAS LEASING PROCEDURES".

I appreciate the opportunity to appear here today to discuss S. 66 and S. 1388, bills that would amend provisions of the Mineral Leasing Act of 1920 dealing with the leasing of onshore Federal lands for oil and gas.

Before I discuss the bills being considered today, I will comment briefly on the state of the oil and gas industry in the United States today.

Oil and gas exploration is deeply depressed, and any changes to the Mineral Leasing Act must be weighed against potential adverse impacts on the industry. According to a recent Hughes Tool Company report only 763 drilling rigs are currently active. In comparative terms, there are less rotary rigs active now than the World War II low of 805. The monthly seismic crew count, with only 166 crews working in May 1987, is at its lowest level since 1970.

Further, 1986 exploration and development outlays are estimated to have been one-half of the 1985 level of $30 billion. It is estimated that in 1986 only 39,400 wells were drilled. Finally, one need only pick up the Denver Post or other western newspapers to read distressing human interest stories of oil and gas companies that have gone bankrupt or people who have lost their jobs.

Not only has the sharp decline in oil prices reduced domestic exploration, but it is also threatening energy security. Oil imports averaged 5.9 million barrels in the first quarter of 1987, up 31 percent from the comparable period in 1985. Our reliance on foreign oil imports rose to 37 percent in mid-May of 1987 from 27 percent in 1985.

In light of this situation, the President issued a statement in June 1986 which emphasized his intent to maintain our national energy security and ensure that the U.S. does not become unduly dependent upon unreliable sources of oil. In his statement, the President directed the Secretary of the Interior to allow economically marginal Federal oil and gas leases to suspend production requirements if the wells would otherwise be prematurely abandoned. This followed a similar action taken by the Secretary on April 17, 1986, for stripper wells — those wells producing 10 or less barrels of oil a day. The suspensions allow lessees to keep their leases and to resume production in the future. These and other actions being taken by the Administration demonstrate our commitment to helping maintain a viable domestic oil and gas industry. In fact, since prices fell to $10 per barrel in 1986 they have recovered to about $18 per barrel which may provide an incentive for some increased domestic exploration.

Although over four million wells have already been drilled in the United States, less than 2.5 percent of that number have been drilled on Federal lands. Wells from Federal onshore oil and gas leases produce about 5 percent of the Nation's oil and gas.

It is within this context that any changes to the Mineral Leasing Act must be considered.

It is within this context that any changes to the Mineral Leasing Act must be considered.

S. 66 would make four major changes in Federal onshore oil and gas leasing:

1) It would subject all onshore Federal lands (including those in Alaska) to competitive leasing for oil and gas. However, following the availability for competitive bidding, if lands do not receive a bonus bid at or above the per-acre level set by the Secretary, those lands would become available for noncompetitive leasing.

2) It would set the royalty rate at a flat 12-1/2 percent for all leases.

3) It would give the Secretary of the Interior the discretion to disapprove assignments where the acreage involved is less than 640 acres outside of Alaska or 2,560 acres within Alaska.

4) It would establish civil and criminal penalties for misrepresentations to the public concerning oil and gas leasing.

The goals of a forward-thinking leasing program are met by S. 66. The bill encourages exploration and development, ensures an adequate return to the public, and can be administered at low cost. At a time when the future of the public, and can be administered at low cost. At a time when the future of the domestic oil and gas industry is uncertain, enactment of this bill would strengthen our domestic petroleum capability by bringing stability and predictability to the Federal onshore oil and gas leasing program.

We believe S. 66 represents a fair and workable solution to the problems facing the Federal onshore oil and gas leasing program. A major issue that we face continually is how to determine which lands should be leased competitively and which should not. Tied in with this is the issue of the Department's ability to perform Known Geologic Structure (KGS) determinations. Those determinations will always be questioned no matter how qualified our personnel are or the size of the budget dedicated to making those determinations. We know of no better way of identifying which Federal lands are of sufficient value to generate competition than going to the marketplace. At the same time, we believe the basic purpose of noncompetitive leasing -- to encourage exploration at low cost -- is still valid. We, therefore, endorse the concept reflected in S. 66 of using a market-based price test to establish when there shall be competitive and when noncompetitive leasing.

In a leasing program in which all lands are subject to competition, the amount of money which may be bid for a lease depends upon the potential cost of operating and maintaining that lease. Thus, the flat, low royalty rate provided in S. 66 may increase the amount of money available for bidding as compared to maintaining a variable rate royalty. In addition, it would provide the lessee with greater certainty as to possible future royalty costs.

Another major issue is the potential for fraudulent abuse of the system. While any system can be abused by "clever" people, we believe the provisions of S. 66 greatly diminish the likelihood of fraud. The use of a $20 per acre minimum bid not only places a ceiling upon the value of tracts available for noncompetitive leasing it also makes it relatively expensive to amass large acreages for sale to the general public. Consequently, the incentive for casual speculation by the general public to participate in both competitive and noncompetitive leasing will be considerably lessened. Further, the authority given to the Secretary to disapprove small acreage assignments will decrease the practice by which large parcels are broken up and sold to the unsuspecting public. Finally, explicitly stated civil and criminal penalties will facilitate prosecution of those who would misrepresent the program by the agencies best suited for this purpose as well as providing incentives for prosecution by State governments.

I offer these specific comments on S. 66.

Section 2 would direct the Secretary of the Interior to lease all lands, including Alaska, to the highest responsible, qualified bidder by oral bidding, as long as the highest bid equals or exceeds a bid price set by the Secretary, which is at least $20 per acre. This section would specifically direct that no tract evaluations shall be conducted in establishing the minimum price set by the Secretary. We presume that this provision, taken with the sentence in section 2 of the bill directing that the Secretary accept the highest bid from a responsible qualified bidder equal to or greater than the minimum acceptable prices, means that no tract evaluation would be conducted in order to accept the high bid. However, we recommend that this point be clarified in the bill.

Section 2 provides a 1-year period within which a person could apply for a lease on lands receiving no bids or bids below the per-acre bid price. We believe a 3-year period would be more appropriate. This would ease the administrative burden in recycling such tracts.

Section 3 would allow the Secretary to disapprove assignments if they involve a separate zone or deposit, a part of a legal subdivision, or are less than 640 acres outside Alaska, or less than 2,560 acres in Alaska. It would require that assignments be processed promptly. Section 3 also refers to subleases. This section is aimed at preventing the "40 acre" merchant from leasing large tracts of land and then breaking that lease into many small parts which can be marketed to an unsuspecting public. We favor this amendment but recommend that all references to subleases in this section of the Mineral Leasing Act be deleted inasmuch as such agreements usually involve the Government as a third party and little, if any, public purpose is served through approval of assignments of operating rights associated with subleases.

Section 6 would "grandfather" lease applications pending at the time S. 66 is enacted. In addition to lease applications being grandfathered, we believe that lands which are currently available for noncompetitive leasing but which have attracted no leasing interest should remain available for leasing under section 17(c) of the Mineral Leasing Act until January 1, 1991. In order to define the category of lands in which there is no leasing interest, we would exclude lands which were subject to a lease or lease application on January 1,

1987. This would enable BLM to identify lands on which there is no leasing interest by posting for simultaneous filings all lands covered by a lease which had terminated, expired or been canceled prior to that date and received no applications. If land is managed by another agency such as the United States Forest Service, BLM refers previously leased land to that agency for review before posting it for simultaneous filings. We would exclude land which has been referred but received no response. This will avoid the possibility that there is no pending application on lands with leasing interest only because they are under review by a surface managing agency other than BLM. Finally, we would exclude all land under study for inclusion in a KGS, or, in Alaska, in a favorable petroleum geological province, and all land in Arkansas.

This would give the oil industry adequate time to adjust to the new leasing system. It would encourage companies to continue their wildcat efforts on lands where there is no other current interest. The proposal should not alter the basic change contemplated by S. 66 since the lands affected by our proposal are not expected to attract the minimum bid.

Section 7 would require issuance of regulations within 180 days of enactment of S. 66 and would require the Secretary to hold at least one lease sale under the provisions of the bill without having issued regulations. In order to meet the 180-day requirement for issuing final regulations, several steps in the regulatory process would have to be shortened or eliminated. The time limit should be changed to at least 270 days because 180 days is not sufficient time within which to issue regulations. The requirement to hold at least one lease sale prior to issuance of the regulations may be too rigid. We believe that until new regulations are in place, the Secretary should have discretion either to maintain the status quo leasing system based on KGS status or to hold a sale under the system envisioned by S. 66. In any event, the opportunity for leasing should not be stopped while regulations are being prepared.

Section 9 would establish civil and criminal penalties for misrepresentations to the public concerning oil and gas leasing. Section 9(c) would require the Attorney General to initiate certain civil actions against persons who know or should have known they were in violation of subsections (a) or (b) of section 9. We understand the Department of Justice has concerns that subsection (c) will limit prosecutorial discretion.

The section immediately following section 9 in S. 66 is also identified as section 9. As a technical matter, the sections should be renumbered at this point, with each section renumbered one number higher.

We believe the second section 9, as it appears on page 13 of S. 66, should be deleted. S. 66 would not allow any payments to the States under section 35 of the Mineral Leasing Act to be reduced by any administrative or other costs incurred by the United States. We strongly support a more equitable distribution of mineral receipts, recognizing the expenses incurred by the

Federal Government in managing minerals on Federal lands. We believe the Federal Government should be reimbursed for the costs it incurs in managing Federal minerals, before making distribution of the receipts, thereby assuring more equitable sharing of the burdens as well as the benefits of administering Federal minerals.

Section 10 of S. 66 would require the Secretary to submit to Congress an annual report dealing with onshore oil and gas leasing. We believe that the requirement for submission of such a report within 1 year does not allow sufficient time to prepare a quality report. A single report prepared and submitted within 3 years of enactment of S. 66 would be preferable. The report should be limited to:

(1) The number of acres leased and the number of leases issued;

(2) The amount of revenue received from bonus bids, rentals and royalties; and

(3) The amount of production before and after enactment of S. 66.

We also believe that the report should be prepared once, not annually. Most of the information is available in the Public Land Statistics and Royalties: A Report of Federal and Indian Mineral Reserves. We see no need to add another annual report to the many we prepare every year, when much of the information is readily available. In addition, the Department is always willing to respond at any time to congressional requests for additional information relative to the operation of our onshore oil and gas leasing system.

Finally, we recommend that S. 66 be amended to add a provision relating to interests in lands which will vest in the Federal Government at some future time.

Beginning in the 1930's, the United States obtained lands under statutes such as the Bankhead-Jones Act and the Weeks Act. In many cases, the Federal Government acquired the surface outright but acquired only a future interest in the minerals. Until the vesting of the minerals in the United States--anywhere from 25 to 50 years after acquisition--the grantees of these lands had fee ownership of the minerals, including the right to lease and develop them. Because centralized records were not kept of these conveyances, we do not know how many of the lands contain the future Federal mineral interest. We do know that there are cases where the current owners of these interests have leased them to third parties.

Under current law and regulation, a lease on a future interest that is not located in a KGS may be issued directly to the current owner of mineral rights either as an operator holding such rights or as mineral fee owner. However, future interest leases for lands which are located in a KGS must, under current statute, be leased under a competitive bidding system. Therefore, it is possible that the current owner or operator may lose his present rights or, at the least, have to pay for the mineral interest again. The possibility also exists for interrupted production if the current owner/operator loses his mineral interest.

We suggest that language be adopted to allow the Secretary to issue a lease without competitive bidding to any person who is operating a producing well at the time of lease issuance and, under assurance satisfactory to the Secretary, will continue to be operating the producing well at the time the future interest vests in the United States. The proposed amendment would be in the interest of equity to the current owner/operator and would assure continuation of production.

We favor the enactment of S. 66 with the amendments suggested and strongly urge positive congressional action on it.

S. 1388 is similar to S. 66 in several respects. It includes the provisions for criminal and civil penalties for persons and/or corporations who misrepresent values of lease or lands or the ability to obtain leases; gives the Secretary authority to disapprove assignments or subleases; and provides that section 102(2)(C) of the National Environmental Policy Act of 1969 shall not apply to actions taken by the Secretary to develop an oil and gas leasing program or to hold individual oil and gas lease sales.

More specifically, section 2(a) of S. 1388 would amend section 17(b)(1) of the Mineral Leasing Act to provide that all lands, except those available for over-the-counter leasing on the date of enactment, shall be leased by competitive bidding. This provision differs from S. 66 in that it provides for exemption from competitive leasing for an unlimited period of time for all lands which at the time of enactment are available for over-the-counter leasing. Correspondingly, there is no provision to exempt, for a period of time, a lease already exposed to competition.

The exemption from competition of current OTC lands and lands which fail to receive bids of $1 per acre until they are once again leased noncompetitively may create problems for this system in the future. Because the oil market is currently depressed, we can expect many lands to fail to receive the $1 bid. More than half of current SIMO lands do not receive a single application. As lands become more valuable as the oil market rebounds, there will be no opportunity to share in the increased values. It is likely that these lands will be assigned for more than $1 per acre. When this happens, there will be pressure to eliminate the OTC exemption, resulting in an all-competitive leasing program with no noncompetitive fallback. Furthermore, land values in the oil patch do not move smoothly and continuously from zero to $1 per acre to higher values but tend to jump around as interest in an area waxes or wanes. It is likely that some lands which can be obtained cheaply through the OTC exemption will be assigned for values above $1 per acre in these circumstances as well. We prefer the approach reflected in the provisions of S. 66.

S. 1388 also differs from S. 66 in that in conjunction with section 17(b)(1) it would amend section 17(c) of the Mineral Leasing Act to provide that lands which receive either no bids or bids below the $1 minimum shall be available for noncompetitive leasing indefinitely, rather than for a specified period of time. Again, we prefer the provisions of S. 66 but that the period of time should be set at 3 years. The low $1 minimum bid likely will eliminate the need for a computerized simultaneous leasing although some instances will arise where selection among OTC applicants will need to be made. This could result in a process which we expect will prove to be a great administrative burden.

As we have stated before, no system can be guaranteed to be free of fraudulent abuse. The fraud provisions of both S. 66 and S. 1388 could go a long way toward preventing such abuse. However, the Department of Justice is still reviewing these provisions to insure they will be adequate and may comment further on this issue directly to the Committee. Nevertheless, we believe the higher $20 per acre minimum in S. 66 has certain advantages in this regard relative to the $1 per acre minimum in S. 1388.

The $1 per acre minimum bid makes it very easy for less than forthright individuals to obtain considerable amounts of land cheaply. They can then advertise this land as competitively won and assign 640 acre sections at $5 and $10 per acre without resorting to any fraudulent claims or smaller acreages. Their ability to obtain the land necessitates their beginning the bidding at $1 and dropping out whenever anyone raises their bid. Since many lands do not now warrant $1 per acre as evidenced by the large number of SIMO tracts receiving no applications, they should have little trouble amassing a sufficient land base to undertake such a venture (one which should not trigger the fraud or "40 acre" merchant provisions of the bill).

We also have some technical concerns with S. 1388 but believe these can all be corrected.

1. Use of availability for leasing under Subpart 3111 of 43 CFR on the date of enactment maintains the need for KGSs and FPGPs since these lands must be noncompetitively available and to be so must meet the general requirements for noncompetitive leases stated in Subpart 3110 which requires the land to be outside a known geological structure of a producing oil or gas field or a favorable petroleum geological province in Alaska. We believe one of the purposes of S. 1388 is to eliminate the need for a KGS or FPGP. This goal could be accomplished by adding language to clarify that if lands are not in or under study for inclusion in a KGS or FPGP on the date of enactment then noncompetitive leases should be issued if all other requirements are satisfied.

2. We would note the stated $1 per acre minimum bid may not be sufficient to cover the administrative costs of the sales. In Wyoming BLM uses $5 per acre for its KGS sales currently.

3. Setting the rental rate for all leases at $1 per acre takes away the current flexibility afforded by "no less than $.50". The minimum royalty set

at $1 per acre, while consistent with the overall rental rate, is counter the GAO and Department's attempts to gain some flexibility with respect to the minimum royalty by supporting "no less than $1 per acre".

4. The grandfather conditions in section 5, as currently written, would require continued KGS and FPGP classifications. It should be made consistent with our first technical comment. Additionally, there is no specific exemption for Fort Chaffee, Eglin A.F.B. and other areas we believe need to be competitively tested.

5. The bill fails to amend section 188 of the Mineral Leasing Act to eliminate a phrase dealing with cancellation of leases. This phrase has been interpreted to mean that if a lease is in a KGS it cannot be cancelled by the Secretary. Because this implies KGS's need to be maintained, that provision is inconsistent with the intent of the amendments contained in S. 1388. Section 4 of S. 66 addresses this issue and should be added to S. 1388 to correct this.

6. Section 2(b) of H.R. 1388 would also amend section 17(c) of the Mineral Leasing Act to provide that lands in leases, except those previously issued noncompetitively which terminate, expire, are cancelled or relinquished, shall be available for competitive leasing within 90 days. We object to any legislated timeframe for offering lands for competitive leasing since there may be circumstances beyond the control of the Secretary which make it impossible to meet the fixed deadline. We suggest the phrase "to the extent practicable" be added.

In summary, we support enactment of S. 66 with the improvements suggested herein, and do not favor enactment of S. 1388.

This concludes my statement. I will be pleased to respond to any questions.

Senator **MELCHER**. Bob, how long have you been down there at BLM?

Mr. **BURFORD**. Since 1981, sir.

Senator **MELCHER**. And prior to that, did you engage in any activity connected with onshore production?

Mr. **BURFORD**. No, sir. I have had oil rights.

Senator **MELCHER**. Have you had some of your own land leased?

Mr. **BURFORD**. Yes.

Senator **MELCHER**. Any production?

Mr. **BURFORD**. No.

Senator **MELCHER**. What was the lease for?

Mr. **BURFORD**. At the time I leased it was leased for $1 an acre bonus, $1 an acre rental.

Senator **MELCHER**. That was what you received?

Mr. **BURFORD**. Yes, sir.

Senator **MELCHER**. So you received $1 an acre and $1 bonus.

Mr. **BURFORD**. Yes.

Senator **MELCHER**. No drilling.

Mr. **BURFORD**. Dry holes.

Senator **MELCHER**. You had a dry hole. One?

Mr. **BURFORD**. I think they drilled more than one.

Senator **MELCHER**. How much was leased?

Mr. **BURFORD**. I had a third interest in 5,000 acres or something like that.

Senator **MELCHER**. About 5,000 acres. So the United States picked up probably $5,000 each year for as long as the——

Mr. **BURFORD**. No. It was not Federal land.

Senator **MELCHER**. It was not Federal land.

Mr. **BURFORD**. No.

Senator **MELCHER**. So Bob Burford picked up $2 an acre for the first year and $1 a year for a few years after that.

Mr. **BURFORD**. Yes.

Senator **BUMPERS**. I do not think that is right. I think you got $1 an acre bonus bid, plus $1 an acre delayed rental each year thereafter.

Mr. **BURFORD**. Well, I cannot remember now exactly how it was. It has been a long time ago.

Senator **MELCHER**. I think that is just what I said. You got $1 an acre lease the first year, and $1 bonus the first year. And thereafter, got $1 an acre for——

Mr. **BURFORD**. That seems to me to be correct. But I would not imply that, I have never leased——

Senator **MELCHER**. Was there Federal land intermingled there or adjacent to there that was leased?

Mr. **BURFORD**. Federal land is close. Yes.

Senator **MELCHER**. Pardon me?

Mr. **BURFORD**. Federal land is close.

Senator **MELCHER**. Close.

Mr. **BURFORD**. Yes.

Senator **MELCHER**. So all that resulted was dry holes.

Mr. **BURFORD**. At that time, yes.

Senator **MELCHER**. How much leasing has occurred since 1981?

Mr. BURFORD. I think that is a question that I am going to have to answer for the record, unless Mr. Lawton has that figure with him.

Mr. Lawton, who is the Assistant Director for Energy and Minerals, says 12,000 leases a year. But I am not sure we have an acreage figure. As a wild guess, 10 million to 15 million acres a year.

Senator MELCHER. And has it gone down?

Mr. BURFORD. Yes.

Senator MELCHER. Substantially gone down, or modestly gone down?

Mr. BURFORD. It has substantially gone down.

Senator MELCHER. Then very little leasing the last couple years.

Mr. BURFORD. That is right. And even less drilling.

Senator MELCHER. And you would recommend retaining the lottery.

Mr. BURFORD. No, sir. I support S. 66.

Senator MELCHER. No lottery.

Mr. BURFORD. There is a provision in there that for those lands which do not bring $20 an acre, and there may be a considerable amount of them, it might be necessary to run a lottery on those lands, if there is a lot of interest in them at under $20 an acre.

Senator MELCHER. Tell me, do you still own your land?

Mr. BURFORD. No. Not that.

Senator MELCHER. You do not own any land in Colorado any more?

Mr. BURFORD. Yes. I still own some land.

Senator MELCHER. Is any of it leased?

Mr. BURFORD. I do not think so. I put all those leases in a trust, so I really cannot answer that. But I would say that 90 percent of the land that I own, there would be no interest in because it is sitting on a basalt, and it is not overthrust basalt.

Senator MELCHER. But when it was leased, you did not get $20 an acre. Why did you ever lease it?

Mr. BURFORD. To encourage production.

Senator MELCHER. Pardon me?

Mr. BURFORD. To encourage exploration.

Senator MELCHER. To encourage exploration.

Mr. BURFORD. Yes.

Senator MELCHER. Do you think if you had asked $20 an acre, you had gotten one cotton-picking bid?

Mr. BURFORD. I probably would have if I had waited until 1980 to lease it. But the way things were in prior times, no. And the way they are now, no.

Senator MELCHER. Well, do you know of anybody in Colorado that is getting $20 an acre for land to lease it?

Mr. BURFORD. I have not run a survey there, so I do not know of anybody who is. I would not feel qualified to say that there were or were not acres bringing $20 per acre.

Senator MELCHER. Well, I am qualified to say about Montana. I do not know of any rancher getting a bid for $20 an acre to lease his land.

But yet you are telling us that that should be the minimum. Is that not running a chance of no activity?

Mr. **Burford**. I am supporting that figure because I think that over that is where we have had the Amos Draws and the Fort Chafees, where we have had very valuable lands sold——

Senator **Melcher**. Bob, you are coming here as director of BLM to tell us that your past experience, before becoming director of BLM, was to lease 5,000 acres of your own, where you got $1 an acre and a $1 bonus. And that is a one time bonus.

Now you are telling us that we should make Federal policy on Federal lands that the minimum would be $20 and that beyond that you would retain the lottery.

Mr. **Burford**. I would submit that at the time those leases were let, oil was $3 a barrel and gas was 50 cents a thousand.

Senator **Melcher**. Well, we have had plenty of time since oil was up above $3 a barrel, in order to make a judgment. And you did too before you came to the Bureau of Land Management.

You came in 1981, and oil was well above $3, had taken on a great climb. You are telling us that, just based on experience that you have had, that Federal policy ought to be, put the minimum higher than was ever the case on private land.

We have the provision in both bills for competitive bidding. So that puts the Federal government in the same position as a private individual is. If you can get more, fine. Let us get it.

But then you come and tell us that, well, we will put it in a minimum of $20, and we will retain the lottery. I do not know. This seems to me to be a continuation of a failed policy that has been the case with the Bureau of Land Management for the past several years that you have already testified to.

I have no further questions. Senator Bumpers?

Senator **Bumpers**. Mr. Burford, when did you lease this land that Senator Melcher was asking about? That 5,000 acre tract.

Mr. **Burford**. Those leases were let and I inherited the leases.

Senator **Bumpers**. Somebody else had leased it and you just inherited it?

Mr. **Burford**. Yes. I inherited the leases. It was all on private lands.

Senator **Bumpers**. So you did not lease it yourself?

Mr. **Burford**. No. Although I was present when the leases were made.

Senator **Bumpers**. Would you lease your lands for $1 an acre if somebody is standing there offering you $100?

Mr. **Burford**. No, sir.

Senator **Bumpers**. I am glad to hear that.

Mr. **Burford**. Well, I have known of some areas in Utah which, in 1978 to 1981, there were bonus bids being offered of $50 to $100 to $150.

But that was certainly not the case 10 years prior to that time and is probably not the case today. The same as Amos Draw, which was leased out, and a supposed bonus of $1 million or more was paid for it, of which I have no first-hand knowledge. But that is the rumor. And I think that Amos Draw today could be leased for $1 an acre.

Senator **Bumpers**. But under S. 66 what we do is put lands up for competitive bids. We say, if it brings $20 or more, whoever bids higher gets it.

It does not bring $20, then it is available on either a lottery, just like you have now, or first come first served basis. Is that right?

Mr. **Burford**. That is right.

Senator **Bumpers**. It does not make much sense, does it, to be leasing lands arbitrarily for $1 an acre that might bring $20 to $1,000 an acre? Does it?

Is there any justification for leasing lands for $1 an acre that would easily bring $100 to $1,000 an acre, that you can think of?

Mr. **Burford**. There is no justification. Under Senator Melcher's bill, there would be a competitive bid, but the minimum is $1.

Senator **Bumpers**. We have 50 states in the union. Do you know of any state that does not lease all of their lands on a competitive basis?

Mr. **Burford**. No. Wyoming was the last State to not lease——

Senator **Bumpers**. The governor, incidentally, is one of the strongest proponents of this legislation, as was Governor Matthis, and all those Western state governors. And I can tell you that the last time we had hearings, the Attorney Generals Association, and virtually every governor of all the states where these lands were being leased, every one of them favored the legislation.

In New Mexico last year, their lands averaged, I guess this is either $50 or $36 an acre. Is this the average here, $72? Yes, their lands averaged $72 an acre. Now that does not mean that every tract brought $72. Some of them probably brought $200. Some of them probably brought $5.

Senator **Wallop**. Just for observation, it also does not mean that every tract brought anything. I believe Wyoming's experience has been, and Bob I think you'll back me up on this, that the State actually took less money in because fewer tracts were leased.

The average was substantially higher. But there were tracts that could bring no bid under that circumstances, that did bring income to the states under the previous system.

Senator **Bumpers**. If my bill were law today, there would be tracts that would not bring a bid. There would be a lot of tracts that would not bring 50 cents an acre. Nobody wants them at any price.

Senator **Melcher**. Dale, would you yield a minute? Has any state got the lottery?

Senator **Bumpers**. I know of no state. Wyoming was the last state that had a lottery that I know anything about.

Mr. **Burford**. Not to my knowledge, Senator. Wyoming was the last one that went to an all-competitive system.

However, they were making more money for the state coffers under a lottery system than it turned out they were making under an all-competitive system.

Senator **Wallop**. That is true. The figures that we have, in 1983, which was the last year, the lease lottery generated revenues averaging $28.86 an acre.

A year later, after conversion to an all-competitive system, the average had declined to $24.62.

Senator **Bumpers**. I think that you have to bear in mind, that is about when the oil crunch began to hit too.

Senator **Wallop**. 1984? Not quite.

Senator **Bumpers**. Well, I do not know. All I am saying is, I am curious as to what we in the Federal government know that 50 states do not know.

But to get on to the point, if S. 1388 were to become law, Mr. Burford, how much land would be excluded automatically at the very beginning from competitive leasing?

First of all, let me preface that with another question. How much of the Federal lands are now subject to oil and gas leasing? It is less than 50 percent, is it not? Of all Federal lands that are eligible to be leased?

Mr. **Burford**. Yes. It is probably less than 50 percent.

Senator **Bumpers**. Less than 50 percent? And that amount, if S. 1388 were law now, how much of the land that is available, or would become eligible for competitive leasing, how much of it would actually be competitively leased? Do you know the answer to that?

Mr. **Burford**. I do not believe we have calculated that. We do not have a figure on that. But we can make it available. It would probably have to be our best estimate.

[The information follows:]

Because S. 1388 initially exempts from competitive leasing all lands now available for over-the-counter leasing (OTC), the lands now available for simultaneous oil and gas leasing (SOG) and competitive leasing (KGS) would form the lands initially available for competitive leasing under S. 1388. This number would grow over time as OTC lands were leased and those leases expired, because they would thereafter be leased competitively. The acreage initially will be about 32,079,000 acres in the Lower 48 States and 14,230,000 acres in Alaska now in the competitive pool plus all noncompetitive lands now under lease totaling about 92,000,000 acres in the SOG pool for a total of about 138,309,000 acres.

It is impossible to forecast how much will actually be leased noncompetitively under S. 1388 with its low $1 minimum bid; however, we would estimate not less than 25 percent and not more than 65 percent.

Senator **Bumpers**. Can you operate a competitive leasing system for $1 an acre? What is your cost on a competitive lease?

Mr. **Burford**. I think the cost is around $5 an acre to run a competitive leasing system. But I would assume that under $1 an acre minimum, that the average would be considerably higher than $1 an acre, that there are costs associated with any leasing system.

Senator **Bumpers**. If somebody drilled and hit——

Senator **Melcher**. Dale, would you yield, just to clarify that?

Senator **Bumpers**. Yes.

Senator **Melcher**. Are you speaking about that that would be competitively leased, where, as I understand your response, would be around $5 an acre?

Mr. **Burford**. That is about what it costs for us to lease an acre under the present system.

Senator **Melcher**. That is with this simultaneous lottery bit.

Mr. **Burford**. And competitive too.

Senator **Melcher**. Yes. All right. But for the record, I just want to get over-the-counter costs.

Mr. **Burford**. Well, I think that the SIMO system is probably a little higher than that. But the competitive system is about $5.

Senator **Melcher**. And over-the-counter is about how much?

Senator **Bumpers**. Let me ask you a question on a separate item.

Senator **Melcher**. Could we get that answer, Dale?

Senator BUMPERS. I am sorry.

Mr. BURFORD. I am not sure that I have a figure on OTC. But it would be considerably less than a competitive system—maybe $1 an acre or maybe less than $1 an acre.

Senator MELCHER. Thank you.

Senator BUMPERS. Now today, if somebody finds oil or gas on a lease that they have gotten on a non-competitive basis, either won it in a lottery or got it over-the-counter, let us assume that somebody gets a 500 acre tract of land or a 2,000 acre tract of land, and they hit something.

Now, under existing law, where we determine KGS, the last testimony we had, when Senator Ford was chairman of the subcommittee and we were investigating the Chafee leases, the geological survey people told us that what they did when there was production found that they just considered anything within a mile of that production a KGS, and anything beyond a mile was not.

Do you know whether they still use that same test or not?

Mr. BURFORD. No. We have spent considerable time and effort on determination of KGSs over the past three or four years since Fort Chafee.

Of course, Fort Chafee took place before I was ever on board. But we have had two or three studies, the Kiplinger study, the study by the National Academy of Science. We have put a great deal of effort into determination of KGSs.

We find that it does cost quite a bit to determine a KGS. We spend a lot of time on it. We also find that in many instances, there is argument that we have gone either too far or not far enough on delineation of KGSs.

I think that is something that honest people can have honest differences of opinion about.

Senator BUMPERS. Now, if we eliminate KGS from consideration on whether lands ought to be leased competitively or not, and somebody finds oil or gas on a tract that they got on a non-competitive basis, and there is no longer a KGS test, but you are just simply using a market test, and yet some lands still would be prohibited, as I understand it under Senator Melcher's bill, from being let competitively.

What could you do about it? As I understand it, under S. 1388, an awful lot of land is automatically excluded from competitive leasing. Would that mean you just have to continue to lease lands around the hot area for $1 an acre?

Mr. BURFORD. If it is grandfathered in that way, it would have to be leased for $1 an acre.

Senator BUMPERS. So you have the potential here for somebody finding a hot oil and gas find, and yet the Bureau of Land Management's hands would be tied.

If they are going to let it at all, they would have to let it for $1 an acre, would they not?

Mr. BURFORD. That is the way I understand it.

Senator BUMPERS. And then the first thing you know, a bunch of us up here will be trying to get you to declare a moratorium on all that land and pass new legislation, whereas if you had all lands subject to a competitive system, you would not have to do that. Would you?

Mr. **Burford**. One of my main aims is to get in place a system which continues to operate, as free of fraud as is possible, where the stakes are as high as they are sometimes in oil, and keep land moving to the oil companies for exploration.

Senator **Bumpers**. Now, both Senator Melcher and I have an identical provision, and that is a straight 12.5 percent royalty.

Mr. **Burford**. Yes, sir.

Senator **Bumpers**. And we have eliminated the sliding scale royalty. Do you think that the fixed royalty encourages production?

Mr. **Burford**. I think the fixed royalty encourages production, and I also think that the fixed royalty enhances the company's desire for good conservation practices, in that if they have a well which is going to produce up to where it might become up into a higher bracket, that they will not impede that production by keeping it below the certain limits that the sliding scale and royalty is. I think it is a good provision.

Senator **Bumpers**. It makes it simpler to administer too, does it not?

Mr. **Burford**. Yes, sir.

Senator **Bumpers**. I do not have any other questions.

Senator **Melcher**. Senator Wallop?

Senator **Wallop**. Mr. Chairman, I have a statement that I would like to have inserted in the record.

Senator **Melcher**. It will be made part of the record.

[The prepared statement of Senator Wallop follows:]

STATEMENT OF SENATOR MALCOLM WALLOP

CONCERNING S. 66 AND S. 1388

REFORMING THE FEDERAL ONSHORE OIL AND GAS LEASING PROGRAM

JUNE 30, 1987

I THANK THE CHAIRMAN FOR HOLDING THIS HEARING. IT IS ONE THAT HAS BEEN LONG OVERDUE.

WHEN THE FULL COMMITTEE PASSED SENATOR BUMPER'S BILL, S. 2439 BY A 15 TO 2 VOTE ALMOST A YEAR AGO, I WAS ONE OF THE TWO DISSENTING VOTES. MY OBJECTIONS TO THE BILL AT THAT TIME WERE BASICALLY TWO-FOLD. FIRST, THE INDUSTRY WAS BEING ASSAULTED BY CHEAP OIL AT $10 TO $15 A BARREL. SECOND, THE INDEPENDENTS, WHO DRILL 90 PERCENT OF ALL WILDCAT WELLS, HAVE NOT HAD AN OPPORTUNITY TO PUBLICLY COMMENT ON SENATOR BUMPERS' LEGISLATION.

THIS MORNING, WE ARE GOING TO LISTEN TO TESTIMONY ON BOTH SENATOR BUMPERS' BILL, WHICH HAS BEEN REVISED SEVERAL TIMES SINCE ITS PASSAGE BY THE COMMITTEE LAST YEAR, AND NOW SENATOR MELCHER'S BILL. I BELIEVE BOTH SENATOR BUMPERS AND SENATOR MELCHER HAVE HONESTLY ATTEMPTED TO IMPROVE A LESS THAN PERFECT SYSTEM.

I AM HERE TODAY TO LISTEN AND LEARN ABOUT HOW THESE PROPOSED CHANGES WILL AFFECT THE ABILITY OF THE INDEPENDENT TO PARTICIPATE IN THE REFORMED LEASING PROGRAM, AS WELL AS THE ABILITY OF ANY "REFORMED" PROGRAM TO WORK NOT ONLY IN THEORY OR ON PAPER BUT OUT IN THE FIELD.

WE CAN NOT MAKE CHANGES IN A VACUUM, NO MATTER HOW "MINOR" WE MAY VIEW THEM FROM OUR PERCH IN WASHINGTON, D.C. THE ENERGY INDUSTRY PROVIDES ALMOST 28 CENTS FOR EVERY DOLLAR THAT GOES INTO THE STATE OF WYOMING'S GENERAL REVENUE FUND. IT FORMS THE ECONOMIC BEDROCK FOR MY STATE'S SCHOOLS, ROADS, HOSPITALS AND THE OPERATION OF THE STATE GOVERNMENT -- LIKE THE WYOMING GAME AND FISH DEPARTMENT. AS THE CHAIRMAN CAN WELL UNDERSTAND, THESE "REFORMS" MUST BE CONSIDERED VERY CAREFULLY IN LIGHT OF $18-20 A BARREL OIL, CONSISTENTLY LOW RIG COUNTS IN THE ROCKY MOUNTAIN WEST, AND THE CONTINUING NEED FOR OUR COUNTRY TO HAVE A SECURE, HEALTHY ENERGY FUTURE.

Senator **Wallop**. Let me begin by saying that Senator Bumpers has worked very hard on this, and so too have you, Senator Melcher, and I think we are getting to a point where there is an acceptable solution to all of this.

I would have to say, Bob, I do not know what you base the cost of leasing on in recent years. There has not been much leasing. I do not know how you get experience out of the past couple of years to make a judgment as to how much anything costs.

Mr. **Burford**. That was before the downturn.

Senator **Wallop**. Let me ask you this, and I agree with you, Senator Bumpers, one of the great advantages of a competitive segment of this is eliminating that whole witchcraft of the KGS, because it is always going to be confrontable by competent geologists of differing opinions.

But you said in response to Senator Melcher that there would be circumstances under which it might be necessary to do a lottery.

Mr. **Burford**. To what?

Senator **Wallop**. To conduct a lottery. I am sort of curious as to why that is. If you have a competitive bid, and tracts are not leased, and given the current set of oil prospects, there will be numbers of tracts not leased, because the geology and the promise just is not in them for $20 an acre bonus bidding.

Can you just tell me what you think is going to happen to those lands that are not leased? And is that a process that you contemplate going on?

Mr. **Burford**. I think it is one that we are feeling our way on. But let us just make the assumption that there is land out there which nobody feels is worth venturing $20 an acre on, but there are——

Senator **Wallop**. I think you can assume that. That is no mystery. That is going to be more often than not the case.

Mr. **Burford**. True. But let us say that there are a good many companies who might be interested in it at $10 an acre.

And they all come in and slap over-the-counter requests for that land at one time, and we have to determine some way between those different applications, some kind of a modified drawing system might be necessary to find out who gets the lease.

Senator **Wallop**. That gets profoundly inefficient. It would strike me, I do not know, if the Bureau and if USGS sit around and contemplates what to do, the chances are nothing will be done.

Would it not be better, that having failed at the competitive bidding, that you go straight to lottery?

Mr. **Burford**. Well, yes. If I remember correctly on Senator Bumpers' bill, that is possible, to go straight to lottery.

Senator **Wallop**. Okay, I am not talking about possibilities. Really, there is an industry out there waiting to be satisfied with a process which it is going to be obliged to conduct its affairs under.

This strikes me that one of the things that we ought to do in all of this is not leave huge areas of doubt as to what takes place. And I approve of the competitive bidding process. Whether it is $1 or $20 or somewhere in between.

But once you have gotten that, it seems to me to be both in the national interest from an energy standpoint and the national interest from a revenue standpoint to get as much of what remains leased as possible.

Mr. **Burford**. Well, I think that it would be our intent to go straight to a lottery system on the rest of them and those that do not receive applications in there to go to OTC.

Senator **Wallop**. Dale, is that your understanding?

Senator **Bumpers**. My understanding is that if a parcel is a new parcel, that is it would be OTC parcel, that is first come first served, and you put that up for competitive bid and it does not get a bid, at least does not get a $20 bid, it goes back to OTC available for first come first served.

Mr. **Burford**. Yes. That is a new parcel.

Senator **Bumpers**. And that the old parcel, that is those which have been in the SIMO system before, now, what happens to those once the lease expires? In the SIMO bill, if the lease expires on them, they go to the competitive system, and if they do not get a bid there they go back into SIMO.

Mr. **Burford**. Yes.

Senator **Bumpers**. So what we are saying is, I think——

Senator **Wallop**. And that is a process that you will implement. So then, there really are not circumstances under which it might be necessary to do the lottery, it is necessary after the competitive bidding fails to——

Mr. **Burford**. $20, with a $20 minimum.

Senator **Wallop**. And then it goes to the lottery, except for the new parcels.

Senator **Bumpers**. Senator Wallop, will you yield on that point? I think it would be good if BLM would submit for the record precisely how they would implement this.

And secondly there is a provision in our bill that they will run at least one lease sale prior to the finalizing of their rules and regulations and see how it works.

Mr. **Burford**. I think we already have some papers and some charts which we can submit for the record, which will show you exactly how it will work.

[The information follows:]

With a $20 minimum bid most tracts will not attract the minimum bid but will still attract much interest at lower costs. This intense interest will force use of a lottery to choose among the multiple filers for each tract. With a low $1 minimum bid such filers can compete for virtually all less valuable tracts in the competitive system obviating the need for a lottery in most instances.

Because of the low minimum bid of $1 per acre we expect simultaneous oil and gas leasing (SOG) would disappear, at least as a formal part of the program. It is likely we will still have to rely on nominations as the competitive test because of the oral bidding requirement. Otherwise sales in Wyoming and New Mexico could take days. The process would either start with nominations provided by the public based on their knowledge of what lands are becoming available through expirations, terminations, relinquishments or cancellations or alternately BLM, at some cost, could put this information in a bimonthly list of lands available for nomination. Lands not nominated would still have been made available for competition and, having been so, could then be leased OTC. Most lands will likely get nominations. A nominator, or his agent, would be asked to submit the minimum bid of $1 per acre with the nomination to forestall frivolous nominations. It will be refunded if he is not the high bidder. Tracts will receive the usual checks before or after the nomination process depending on whether a list is used. Nominated tracts will go to sale and the high bidder issued the lease in 30 days. Bonuses will be collected at the sale or alternatively in 7 days thereafter.

OPERATION OF PROPOSED ONSHORE OIL AND GAS LEASING SYSTEM

o Lands come from two sources

- "new" parcels: current OTC and SIMO with no application
- "old" parcels: current SIMO and KGS
- "new" nominated by industry only, "old" by industry or BLM

*** The 1 year period provision for noncompetitive leasing applies only to those "old" parcels which, after failing to receive a sealed bid offer, receive no SIMO applications -- see last bullet for a full explanation ***

o Lands which pass standard checks for availability, consent of surface managing agency and NEPA compliance form a "parcel availability list" which is posted for 30 days

o Any parcel on the "parcel availability list" which receives a sealed bonus bid (at the minimum set by law) during the posting

- is placed on a "competitive interest list"
- is eligible for subsequent oral competitive bidding
- is awarded to the high bidder which may not be the submitter of the sealed bid
- receiving a sealed bid constitutes evidence of meeting the competitive market test

o Any parcel which receives no sealed bonus bid is leased either

- to the industry nominator if a "new" parcel, or
- to the successful drawee in a SIMO drawing if an "old" parcel. SIMO would operate as it now does.

o All parcels on the "competitive interest list", all "new" parcels and those "old" parcels which receive at least one SIMO application will have a lessee determined within 90 days from the posting of the "parcel availability list"

o Only those "old" parcels which receive no application will not be leased immediately

- for a period of 1 year from the posting of the "parcel availability list" such parcels only can be leased OTC without being subjected to a market value retest
- such "old" parcels only will be reclassified as "new" parcels after 1 year from the posting of the "parcel availability list" and treated accordingly, including being subject to a market value retest
- 1 year was chosen to reflect our level of confidence in the stability of the oil and gas market and therefore, the validity of the market test

OPERATION OF THE PROPOSED OIL AND GAS LEASING SYSTEM

The following process is pictorially represented on the attached flow diagram.

Parcels come from two sources: "new" parcels, those which currently would be OTC parcels and those parcels which receive no applications in SIMO, and "old" parcels, those which currently would be SIMO parcels. Since KGS distinctions become irrelevant, all currently competitively leased parcels that again become eligible for lease would be initially treated as "old" parcels. "New" parcels are identified by industry motion only. "Old" parcels are identified by either industry or government motion.

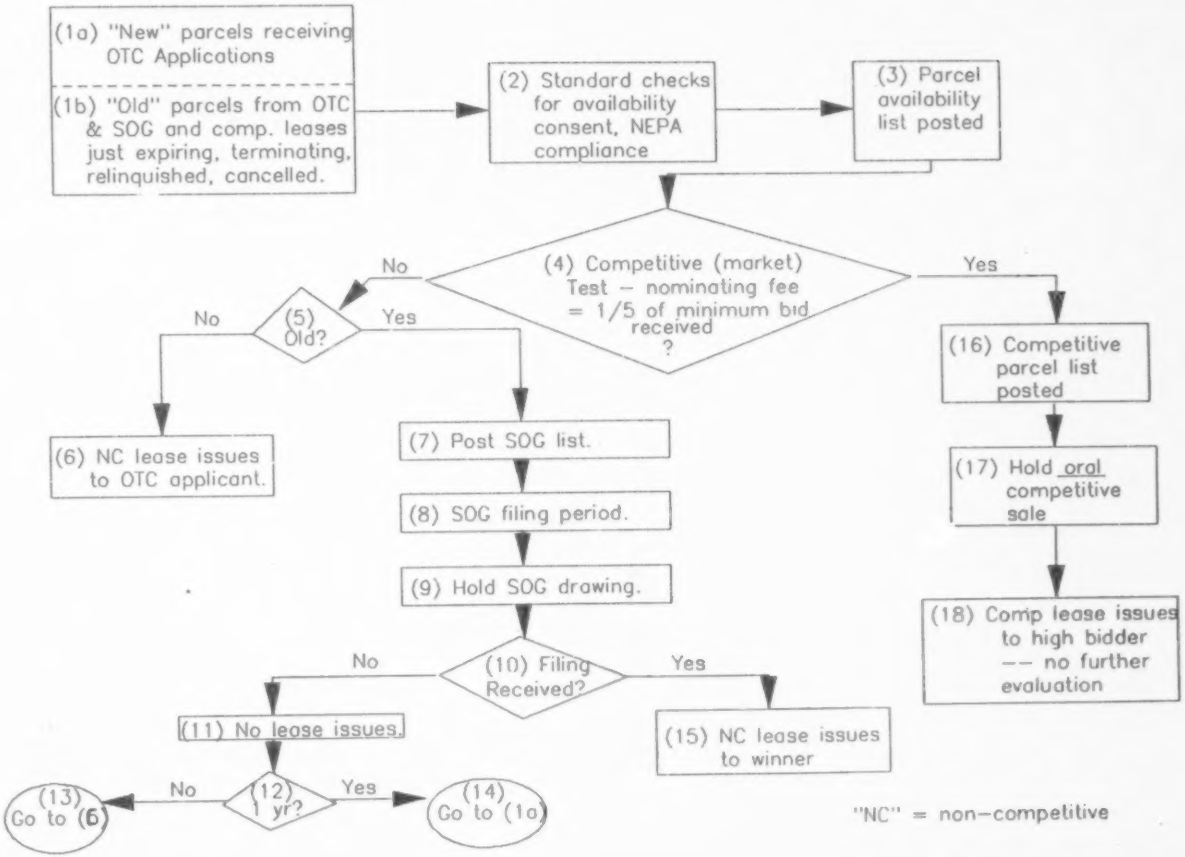
The combination of all "new" and "old" parcels form the universe from which a parcel availability list can be formed. These parcels are first subjected to the standard checks for availability, consent by surface managing agencies and NEPA compliance. Those parcels which are deemed eligible comprise the parcel availability list.

The parcel availability list is posted for 30 days. During this time, any parcel which receives a sealed ~~bid~~ nomination containing at least the minimum offer becomes eligible for subsequent oral bidding. Any parcel which does not is eligible for noncompetitive leasing, the form depending upon whether the parcel was "new" or "old". That is, the parcel availability list is divided into two parts following the 30 day posting: part one, the competitive part containing all parcels which received a sealed bid, and part two, the noncompetitive part containing all parcels which did not receive a sealed bid. RECEIVING A SEALED ~~BID~~ nomination CONSTITUTES MEETING THE COMPETITIVE TEST.

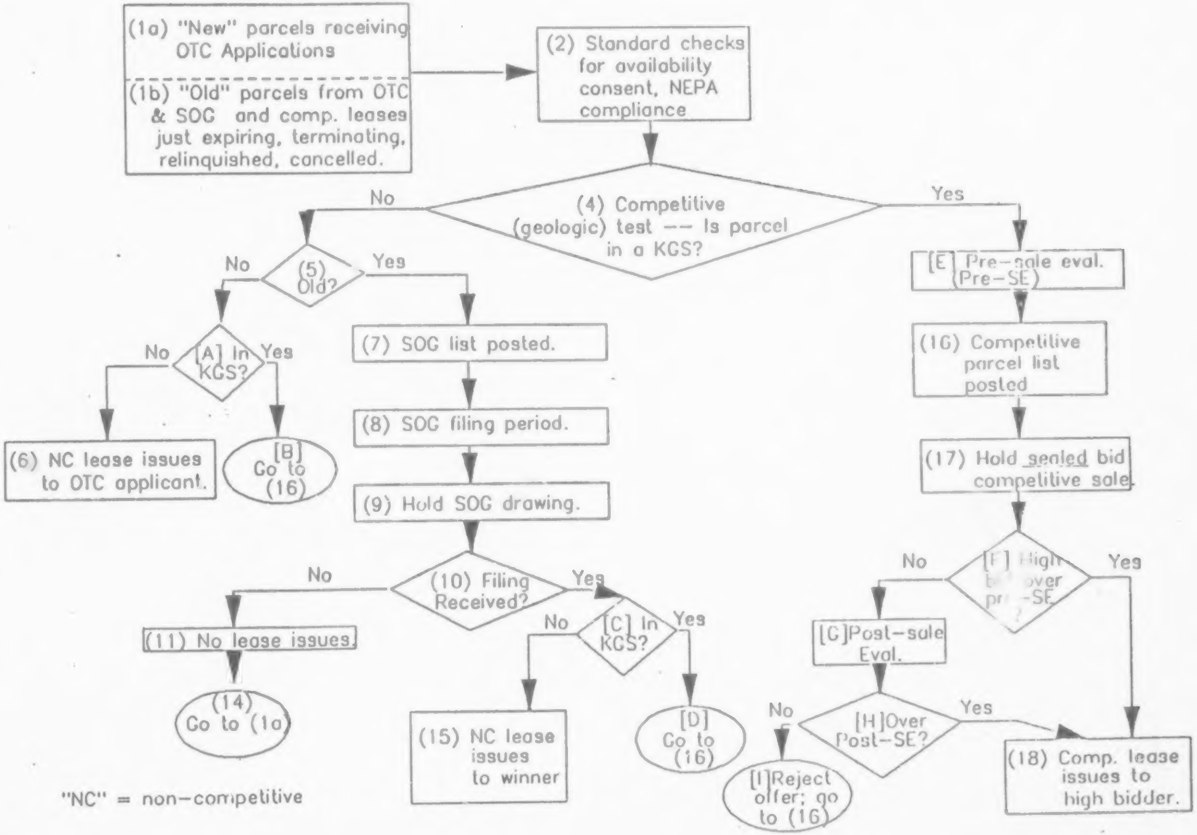
Those parcels which receive a sealed ~~bid~~ nomination (most likely at the minimum level since to bid more might result in money being left on the table at the subsequent oral auction) are then listed on a competitive parcel availability list which is posted for two weeks. After the two week period, an oral auction is held with bidding beginning at the minimum bid. The parcel will go to the highest bidder. If no one bids at the auction, the entity which submitted the sealed offer is the winner. Should more than one entity have submitted the minimum, and no one wishes to raise the bid, a drawing will be held among those who submitted sealed bids.

Those parcels which do not receive a sealed bid are separated into two categories depending upon whether they are "new" or "old" parcels. "New" parcels are leased to the entities which originally nominated them for inclusion on the parcel availability list. "Old" parcels are listed on a SIMO list which is posted for a period of two weeks during which time applications which are received are considered to have been filed simultaneously. If one or more applications are received, a drawing is held following the same procedures as now, with the drawee awarded the lease, if qualified. Any "old" parcel which does not receive an application is available OTC without a subsequent market test for a period of one year only. Thereafter, such "old" parcels are to be reclassified as "new" parcels for leasing purposes and to be treated as any other "new" parcel including being subjected to a market test prior to leasing to the nominating entity. Because of the nature of the economics confronting the oil and gas industry, it was felt that a market test would be valid for a period of up to one year before the parcel should be re-examined by the marketplace. Since a SIMO parcel not receiving an application is the only situation which does not result in a lease being issued, this is the only situation to which the one-year provision applies.

S.66 PROPOSED OIL & GAS LEASING SYSTEM


(1a) "New" parcels receiving OTC Applications
(1b) "Old" parcels from OTC & SOG and comp. leases just expiring, terminating, relinquished, cancelled.
(2) Standard checks for availability consent, NEPA compliance
(3) Parcel availability list posted
(4) Competitive (market) Test – nominating fee = 1/5 of minimum bid received ?
No
Yes
(5) Old?
No
Yes
(6) NC lease issues to OTC applicant.
(7) Post SOG list.
(8) SOG filing period.
(9) Hold SOG drawing.
(10) Filing Received?
No
Yes
(11) No lease issues.
(12) 1 yr?
No
Yes
(13) Go to (6)
(14) Go to (1a)
(15) NC lease issues to winner
(16) Competitive parcel list posted
(17) Hold oral competitive sale
(18) Comp lease issues to high bidder –– no further evaluation
"NC" = non–competitive

EXISTING OIL & GAS LEASING SYSTEM


(1a) "New" parcels receiving OTC Applications
(1b) "Old" parcels from OTC & SOG and comp. leases just expiring, terminating, relinquished, cancelled.
(2) Standard checks for availability consent, NEPA compliance
(4) Competitive (geologic) test -- Is parcel in a KGS?
No
Yes
(5) Old?
No
Yes
[A] In KGS?
No
Yes
(6) NC lease issues to OTC applicant.
[B] Go to (16)
(7) SOG list posted.
(8) SOG filing period.
(9) Hold SOG drawing.
(10) Filing Received?
No
Yes
(11) No lease issues.
(14) Go to (1a)
[C] In KGS?
No
Yes
(15) NC lease issues to winner
[D] Go to (16)
[E] Pre-sale eval. (Pre-SE)
(16) Competitive parcel list posted
(17) Hold sealed bid competitive sale.
[F] High bid over pre-SE ?
No
Yes
[G]Post-sale Eval.
[H]Over Post-SE?
No
Yes
[I]Reject offer; go to (16)
(18) Comp. lease issues to high bidder.
"NC" = non-competitive

4/7/87

Senator **Wallop**. Because the real key to all of this, for an industry that is suffering and which I think still is going to continue to find the largest part of domestic oil and gas reserves, is to have some certainty.

They have been too long in this process, whereby we interfere with it, or there is moratoria, administrative or legislative, where there is just a set of circumstances that nobody knows, including the Bureau, what the next step is.

And if we can come out of this with some sense of certainty, we will have done everybody a service. Thank you.

Senator **Melcher**. Senator Ford, would you like to start your questioning now?

Senator **Ford**. It will take me just a minute, Mr. Chairman.

First, I think all of us have the same goal, to try to get as much for the taxpayers of this country as we can. But to improve exploration and attempt for new finds, as it relates to oil and gas.

I think stability, Malcolm, is one of the main things that we need to look at. I am very hopeful that between the mix here we can do that. I have very little direct interest in what you all are attempting to do here today, so I find myself as somewhat of a bystander.

But I have gone through all of the, when you are hot you are hot, and when you are not you are not. So we need oil and we need gas, and we find a good area and people start bidding high, I have seen them go crazy.

Just drive up to the front door and leave a brand new Cadillac there and throw the keys to the owner, and say, I will be back with the rest of the money later. You know, I have seen those sort of things. It does not last too long. It might in some places.

So if we can figure out something where we can make it competitive, at that point something else triggers. The royalty is basically all across the board. I would hope we could put it together.

We have a little, I think, conflict here this morning. I am going to try to stay out of that, if I can. I am going to leave you in it.

Mr. **Burford**. Thank you, Senator.

Senator **Ford**. So that you can take care of it, Bob. So with that, I am going to go over and vote. I have no questions.

Senator **Melcher**. Senator Conrad, I believe we are going to recess now for sufficient time for us to make the vote. Is that agreeable with you?

Senator **Conrad**. Absolutely.

Senator **Melcher**. You do have questions?

Senator **Conrad**. We have the vote on, and I have another meeting at 11:30. If I could submit a question for the record.

Senator **Melcher**. All right.

Senator **Conrad**. I am very interested in the question of the $20 minimum bid and the effect that that might have on leasing activity and participation by independent producers. That will be the thrust of my question.

I am very interested in the answer to that question.

Senator **Melcher**. The subcommittee will be in recess for sufficient time for our vote. Bob, we would ask you to remain with us. We may have another point or two to take up with you.

Mr. **Burford**. Thank you, sir.

Senator **Melcher**. The subcommittee is in recess.

[Recess.]

Senator **Melcher**. The subcommittee will come to order again. To cap this off, Bob, what you are saying is, as director of the BLM and for the administration is that you would like to get rid of KGS, and would like to have competitive bid, and both bills are similar in that respect.

But where the two bills differ is after the competitive bid. One would drop down into a simultaneous lottery, the lottery system again. Both have anti-trust. There are a couple of points, however, that are different.

The $20 minimum bid is established in one bill, and we seem to think that is all right. But my experience with private landowners, and with the very small amount of land that my wife and I own in Montana, is that we would be delighted to be in a position to get competitive bids from people who really wanted to lease your land. But that does not happen very often. Hardly ever. Out of 100 landowners, if it happens to one, that is pretty good.

Most landowners do, and I assure you for myself that is my attitude, just what you enunciated first, when you said on your own private land you took $1 an acre for the lease and $1 bonus for the first year, with the hopes that there would be some production, because that is where you are going to make some money out of it. Not off of the lease or not off of the bonus.

What surprised me was that you testified that they even drilled on your 5,000 acres. I did not misread you, did I? Is that correct?

Mr. **Burford**. Yes.

Senator **Melcher**. They actually drilled, and for most landowners there is never any drilling.

Mr. **Burford**. Well, we have all had experiences where there has been no drilling. I have watched lots of leases that people have given that expire without there ever being any drilling.

Senator **Melcher**. Well, in my experience, and in my discussions with most landowners, the $1 per year lease and the standard 10-year lease, it is seldom that it is continued to get the $1 a year. The leases are dropped before the 10 years expires.

Mr. **Burford**. Yes. That happens. I know lots of examples of that happening.

Senator **Melcher**. Well, it happens in most cases. So, for some reason, you want to retain the lottery, which I would rather not get into a continuation of the lottery.

If all we want is a continuation of the lottery, you have got law. You have got present law for that. You do not need any additional law for that. And you can have competitive bidding any time you get your KGSs figured out. So you have got authority for that.

What I am telling you is that if we have got to continue a Federal policy of confusion and this weird way of letting people advertise, as Senator Bumpers described here earlier today, the ads running, well, put in your $75 and we will get your name in the pot so maybe it will drawn up.

Apparently you want to continue that. I thought Senator Bumpers was ready to quit on that. But apparently he wants to continue it too. I am not in favor of that. And I do not know where you are coming with your $20 minimum. I guess that it over-the-counter too. Is that right? $20 minimum over-the-counter?

Mr. **Burford**. No, sir.

Senator **Melcher**. Oh. You would be $1 over-the-counter.

Mr. **Burford**. Yes, sir.

Senator **Melcher**. All right. That clarifies that point for me. The way you kept mentioning $20, I thought it was $20 minimum over-the-counter too.

Mr. **Burford**. No, sir.

Senator **Melcher**. If they want to bid on it, and they want to bid $20 and higher, fine. Otherwise, we are going to drop it back into the lottery.

And the bulk of the Federal land would be dropped right back into the lottery, and we would have a continuation of what we have got now.

Mr. **Burford**. Only if it is land that would go into the lottery under the present rules.

Senator **Melcher**. Well, what would you do, you have had the competitive bid, and there is no $20. What are you going to do with it? It is going to be in the lottery? Is it not?

Mr. **Burford**. If it is the so-called SIMO land, at the present. Otherwise you would——

Senator **Melcher**. I think——

Mr. **Burford**. If they do not get any bids then, it would go back to OTC. And under the Bumpers bill it stays there for a period of one year. We would like to see it for a period of three years.

Senator **Melcher**. I think that what the BLM, that has not been making any leases, and what leases were a few years ago seem to create more confusion and more feeling that there is something wrong.

To testify now that you want something like that to continue just does not add up to any really progressive change in policy. And for my part, I will resist it. I want it simplified. I want it leased.

And for the very same purpose you leased your own 5,000 acres of your own land in Colorado, I want it leased on behalf of the Federal government just like I would like to lease my own, what little we own in Montana.

I would like to have it leased. In hopes that somebody might decide to drill a well out there, and that somebody it might be lucky and there would be some production. Now I think that is all there is to what we are discussing here today.

But we are not going to get a policy change unless we get some leasing done. I do not think your testimony adds up to getting any leasing done.

I would rather do nothing, as I will bet we are going to hear today for the people who are independents, that if you can not have a good, straight shot at it, that is not confusing, that takes out all this brushwork, that they would just as soon leave the law alone. No reason to make it worse.

Thank you very much, Bob.

Mr. **Burford**. Thank you, sir.

Senator **Melcher**. The question that Senator Conrad will have, he will submit to you, Bob, for the record, and there may be other questions from others on the committee. So I know you will take care of it if those circumstances arise.

Mr. **Burford**. Yes. Thank you.

Senator Melcher. Thank you. Our next witness will be, I think we are going to hear from David Schaenen. Or, we will hear from Joe Keating right now. Joe Keating, general manager, exploration and production for CENEX, from Billings, Montana.

STATEMENT OF JOE R. KEATING, GENERAL MANAGER, EXPLORATION AND PRODUCTION, CENEX

Mr. Keating. Mr. Chairman, thank you for the opportunity to participate. This matter has been under discussion for a lot of years, and we are grateful for the input as an operator.

My testimony is not written suitable to hand in, but I would like to be able to send that in after I get home.

For the purpose of identification, CENEX is an independent and integrated oil company. We develop oil and gas prospects, secure leases, drill wells, produce oil and gas, transport, refine and market petroleum products.

For more than 40 years we have conducted exploration and production operations from the Billings area. Twenty miles to the west we own and operate a 42,000 barrel a day refinery at Laurel, Montana, and most of our marketing is in the 14 northwestern states.

All of our oil and gas production is in Montana, North and South Dakota, and Wyoming. We rank as the 53rd largest oil producer in the Nation, and nearly 90 percent of our crude oil production is from Federal ownership, which prompts us to be concerned about lease availability and the leasing procedures.

CENEX supports the present system of over-the-counter leasing, which has a proven history of encouraging exploration and development of mineral resources. Unfortunately, the regulations developed to manage the leasing system have so adversely affected the process that these legislative corrections are being considered.

CENEX recognizes the need to correct. However, we view some of these proposals as overcorrections. The following areas in the regulation of the Federal oil and gas leasing process are addressed in the proposed legislation. And I would like to make our comments on those.

The first is the simultaneous filing. This resulted from the regulatory effort to provide every citizen qualified to hold an oil and gas lease an equal opportunity. Through the years, numerous regulation changes have failed to correct the abuses in what has developed as the Federal lease lottery.

S. 66 and S. 1388 both propose to eliminate the lottery process by offering leases on lands in that category by competitive bid. CENEX supports the proposed competitive bid system because, as an oil and gas operator, we bid for these oil and gas leases now, with the lottery winners and with their filing companies.

As an end user of the lease, we would abundantly prefer to compete in an orderly, oral sale conducted by an authorized agency of the mineral owner. It is important to note that these oil and gas leases have no value without participation by an oil and gas operator.

The second area addressed in the legislation is the known geologic structure, or the KGS leases. Unleased Federal minerals adjoining producing tracts are classified KGS and become available for lease under a competitive bid system.

Regulation complications and the failure to define what a KGS tract is, from an over-the-counter tract, have made this process almost unworkable. S. 66 and S. 1388 both propose to eliminate the separate KGS system by including all the lands in a competitive bid. And CENEX strongly supports this proposal as a means to correct a serious defect.

Now, historically, a KGS tract was by definition offsetting a producing tract, which in fact then could extend that production. Today, there is no clear definition of a KGS tract.

So this has resulted in thousands of acres of Federal land being unavailable for lease, because regulatory determinations are stalled between what is KGS and what is lottery. Adoption of S. 66 or S. 1388 will break that logjam and put these lands back into the exploration process.

The third area being addressed is over-the-counter leasing, and this provision is basic in the 1920 act, and it should be retained. It is this provision that allows the independent operator to compete in the industry.

Innovative, geologic ideas are stimulated and exploratory frontiers are expanded with the availability of affordable Federal leases. Independent operators must have open lands which can be leased to support new geologic ideas.

If over-the-counter leases are included in the expanding competitive system, then only major oil companies will have the financial means for such block leasing.

Senate bill 66 proposes to restrict over-the-counter leasing to a window period of time. And this will ultimately result in all lands being competitive, and it will be the elimination of over-the-counter.

Senate bill 1388 retains over-the-counter leasing by including in the competitive process only those lands not available for leasing. And CENEX strongly supports the provision in Senate bill 1388.

The fourth area being discussed is the minimum bid. Another defect in the present KGS process is the minimum bid requirement. Evaluations must be made to determine the minimum price acceptable by that regulatory agency.

And sales records contain numerous challenges against the agency decisions for accepting bids that were not high enough, and challenges for refusing to accept bids which are too low.

Competitive lease sales are intended to place the property at the highest market price, using non-industry standards to establish that market price has prevented exploration and development of much Federal ownership.

Senate bill 66 proposes a minimum bid of $20 per acre, while Senate bill 1388 proposes a minimum bid equal to the annual rental of $1 an acre. CENEX supports the provision in S. 1388.

A minimum bid of $20 an acre does three things. It ignores the concept of market value, it forces a regulatory evaluation, and ensures the continuation of the lottery system, which should be abolished because of its abuses.

First, hundreds of thousands of Federal acres have a lease value of less than $20 per acre. As stated, a lease value is in fact zero, unless an oil and gas operator is interested in it.

However, ownership of these acres by industry is necessary to encourage the exploration process. A $20 minimum will instantly halt speculative leasing, which can kill exploration and development programs.

Secondly, a $20 per acre minimum will necessitate an evaluation by the governing agency, a serious defect in the present KGS system. Regardless of what method determines that mid-level, an evaluation, regardless of what it is called, will be required to justify a minimum price.

This agency involvement and that judgment process is presently restricting thousands of Federal acres from being leased.

Thirdly, a $20 minimum bid will guarantee continuation of the Federal lease lottery. All tracts receiving less than the minimum bid will drop to over-the-counter leasing. Qualified applicants not willing to pay $20 an acre or more will file applications.

Such multiple filings will require a drawing to ensure an equal opportunity. Thus, the lottery, with all of its proven abuses, will live on.

CENEX strongly supports the bid provision in S. 1388, which assures a true market value process, eliminates unnecessary participation by a regulatory agency, and abolishes the lottery.

CENEX respectfully, and in the strongest terms, urges unamended adoption of Senate bill 1388, which accomplishes the following eight points.

First, it continues the availability of Federal lease hold to industry for exploration and development of our public resource. Two, it reduces the bureaucratic participation, thus eliminating unnecessary cost, delay, and controversy.

Three, it corrects regulatory deficiencies that to date have a) created a new business of buying and selling Federal lottery leases, b) have delayed for years availability of lands for leasing, and c) have established artificial values on lease hold.

The fourth thing that Senate bill 1388 accomplishes is it creates a true market value system between the owner and the operator for leases on all Federal minerals, including first-time available lands. And this answers the questions, I believe, that were raised about Amos Draw and Fort Chafee.

Five, it encourages exploration and development of public lands by restoring a free market. Six, it preserves the competitive position of both major company and independent operators in the Federal system.

Seven, it preserves the right of every qualified citizen to hold a Federal oil and gas lease. And eight, it maintains separation of the leasing process from environment protection, which we consider a separate body of law.

CENEX is a member of the Rocky Mountain Oil and Gas Association, and the Montana Petroleum Association. And during the past two years I have attended numerous meetings of industry representatives where this issue was discussed.

The last such meeting was held on April 14, 1987 in Billings, Montana. Representatives from 14 different oil and gas entities attended, and every participant was classified as an independent, as we had no major companies represented.

Although the gathering was informal, a unanimous vote was cast in favor of adopting the provisions that are now contained in Senate bill 1388. From large independent company representatives to one-man operations, the discussion and the vote affirmed the position that these specific provisions best served the industry and the Nation.

We certainly wholeheartedly urge the adoption of Senate bill 1388. Thank you very much.

[The prepared statement of Mr. Keating submitted subsequent to the hearing follows:]

CENEX • Post Office Box 21479 • 2220 Grant Road • Billings, Montana 59104 • (406) 656-4343

July 2, 1987

The Honorable John Melcher
Senate Mineral Resources Subcommittee
730 Hart Senate Office Building
Washington, D. C. 20510

RE: Federal Oil and Gas Leasing
S. 1388 - Melcher
S. 66 - Bumpers

Dear Senator Melcher:

CENEX is most grateful for the opportunity to have appeared before your committee on June 30, 1987. At that time our written testimony was not prepared but was to be submitted as soon as possible. The following states the CENEX position:

For the purpose of identification, CENEX is an integrated independent oil company with corporate offices in St. Paul, Minnesota. Working mostly in the northern Rocky Mountain region, we develop oil and gas prospects, secure leases, drill wells, produce oil and gas, transport, refine and market petroleum products. For more than forty years we have conducted exploration and production operations from headquarters in the Billings area. Twenty miles to the west we own and operate a 42,000 barrel per day refinery at Laurel, Montana. Marketing of petroleum products is principally to the agricultural community in the 14 northwestern states. All of our oil and gas production is located in Montana, North and South Dakota and Wyoming. We rank as the 53rd largest oil producer in the nation. Nearly 90% of our crude oil production is from federal ownership which prompts us to be concerned with lease availability and procedures.

CENEX supports the present system of over-the-counter leasing which has a proven history of serving the intent of the Mineral Leasing Act of 1920 which is to encourage exploration and development of our mineral resources. Unfortunately, the regulations developed to manage the leasing system have so adversly altered the process that legislative corrections are now being considered. CENEX recognizes the need to correct the abuses, however, we view some proposals as overcorrections.

The following major problems in the regulation of the federal oil and gas leasing process are addressed in the proposed legislation:

1. **Simultaneous Filings.**

   This resulted from the regulatory effort to provide every citizen qualified to hold an oil and gas lease an equal opportunity to submit an application. Through the years numerous regulation changes have failed to correct abuses in what has developed as the federal lease lottery.

S. 66 and S.1388 both propose to eliminate the lottery process by offering leases on lands in that category by competitive bid. CENEX supports the proposed competitive bid system because as an oil and gas operator we bid for these leases now with lottery winners and their filing companies. As an end user of the lease, we would abundantly prefer to compete in an orderly, oral sale conducted by an authorized agency of the mineral owner. It is important to note that these leases have no value without an oil and gas operator.

2. **Known Geologic Structure leases (KGS).**

   Unleased federal minerals adjoining producing tracts are classified as KGS and become available for lease under a competitive bid system. Regulation complications and the failure to define a KGS tract from an over-the-counter tract have resulted in this process becoming almost unworkable.

S. 66 and S.1388 both propose elimination of the separate KGS system by including these lands in the category of all leases to be offered by competitive bid. CENEX strongly supports this proposal as a means to correct a serious defect. Historically a KGS tract was by definition offsetting a producing tract which could be an extension of production. Today there is no clear definition of a KGS tract which has resulted in thousands of acres of federal lands being unavailable for lease while regulatory determinations are stalled between KGS and lottery. Adoption of the S. 66 or S. 1388 will break that log jam and cycle public properties back into the exploration process.

3. **Over-The-Counter Leasing.**

   This provision is basic in the 1920 Act, has served the country well and deserves to be retained. It is this provision that allows the independent oil and gas operator to compete in the industry. Innovative geologic ideas are stimulated and exploratory frontiers expanded with the availability of affordable federal leases. Independent operators must have "open" lands which can be leased to support new geology. If OTC leases are included in a competitive bid system, only major oil companies have the financial means for such block assembly.

S. 66 proposes to restrict over-the-counter leasing to a window period of time which formula will result in the ultimate elimination of OTC.

S. 1388 retains the OTC process by including in the competitive process only those lands not previously available for leasing. CENEX supports the S. 1388 provision.

4. **Minimum Bid.**

Another defect in the present KGS process is the minimum bid requirement. Evaluations must be made to determine the minimum price acceptable by the regulatory agency. Sales records contain numerous challenges to agency decisions accepting bids that were not high enough and challenges for refusing to accept the highest bids as too low. Competitive lease sales are intended to place the property in industry at the highest market price for development. Using non-industry standards for market price evaluation has prevented the exploration and development of much federal ownership.

S. 66 proposes a minimum bid of $20 per acre while S. 1388 proposes a minimum bid equal to the annual rental of $1.00 per acres. CENEX supports S. 1388.

A minimum bid of $20 per acre ignores the concept of market value, forces a regulatory evaluation and insures a continuation of the lottery system which is to be abolished as an abuse. Hundreds of thousands of federal acres have a lease value of less than $20 per acre. As stated, a lease value is zero without an oil and gas operator. However, ownership of these acres by industry is necessary to encourage the exploration process. The $20 per acre minimum will instantly halt speculative leasing which can kill exploration and development. Secondly, the $20 per acre minimum bid proposal will necessitate an evaluation procedure by the governing agency, a defect in the present KGS system. Regardless of what method determines the bid level, an evaluation, regardless of what it is called, will be required to justify a price. This agency involvement and judgement process is presently restricting thousands of federal acres from industry. Thirdly, the $20 per acre minimum bid will guarantee continuation of the federal lease lottery. All tracts receiving less than the minimum bid will drop to over-the-counter leasing. Qualified applicants not willing to offer $20 per acre or more will file applications. Such multiple filings will require a drawing to insure an equal opportunity to all. Thus, the lottery with all of its proven abuses will live on.

CENEX strongly supports the bid provision in S. 1388 which assures a true market value process, eliminates unnecessary participation by a regulatory agency and abolishes the lottery.

CENEX respectfully and in the strongest terms urges unamended adoption of S. 1388 which accomplishes the following:

1. Continues availability of federal leasehold to industry for exploration and development of public mineral ownership.

2. Reduces bureaucratic participation thus eliminating unnecessary cost, delay and controversy.
3. Corrects regulatory deficiencies which (a) have created a new business of buying and selling federal lottery leases, (b) have delayed for years the availability of lands for leasing, (c) have established artificial values on leasehold.
4. Creates a true market value system between owner and operator for leases on all federal minerals including first time available lands. (Fort Chaffee and Amos Draw)
5. Encourages exploration and development of public lands by restoring free market.
6. Preserves the competitive position of both major company and independent operator in the federal lease system.
7. Preserves the right of every qualified citizen to hold federal oil and gas leasehold.
8. Maintains separation of the leasing process from environment protection which is a separate body of law.

CENEX is a member of the Rocky Mountain Oil and Gas Association and the Montana Petroleum Association as well as other industry associations. During the past two years I have attended numerous meetings of industry representative where the federal leasing process was discussed. The latest such meeting was held in Billings, Montana, on April 14, 1987 attended by representatives from 14 different oil and gas entities. Every participant was classified as an independent operator as no major oil companies were represented. Although the gathering was informal, a unanimous vote was cast in favor of adopting the provisions now contained in S. 1388. From large independent company representatives to one-man operations the discussion and vote affirmed the position that these specific provisions best serve the industry and nation.

Adoption of S. 1388 is wholeheartedly endorsed. Thank you.

Respectfully,
Exploration and Production
Original Signed by J. R. Keating
J. R. Keating
General Manager

Senator MELCHER. Well, thank you, Joe. One point, as Bob Burford just testified for BLM and the department and the administration, I believe, if I understand Senator Bumpers correctly, there is one point I would like to clarify.

You think that Senator Bumpers' bill would get back into the lottery sort of by the fact that there is a $20 minimum. The testimony that we received, and my understanding is that, you get back into the lottery regardless, under Senator Bumpers' bill.

After you go through the procedure of competitive bid, that which is not bid upon does go into lottery automatically and that is the way the department would interpret it and, as I understand it, would implement it.

So I think you are correct in saying that with a $20 minimum, everything that does not get a competitive bid above that goes into some sort of a framework where it would be a lottery. But I think it is deliberate rather than circumstantial occasion.

If you followed my questioning of Mr. Burford regarding what private landowners would do, and what we try to do here prudently is to manage the Federal land as we would do it if we owned it ourselves and try to manage it for our own gain.

How many leases that you know of, and you probably have some leases, CENEX probably has some leases on private land where they do not pay the full $10, $1 a year per lease. With a standard 10-year lease, that does not mean you are going to get $10.

I have never had a lease. On the little bit of land we had, I never had a lease where the people that leased it paid the $1 each of the 10 years. They just dropped it somewhere after three or four years. Is that not correct?

Mr. KEATING. That is true, yes.

Senator MELCHER. Is that not what CENEX does?

Mr. KEATING. You bet. We do. And that depends on the geologic process, the evaluation process we are going through.

Senator MELCHER. Just one other question. There is a distinction in these bills. I introduced S. 1388 with a 10-year lease.

Mr. KEATING. Yes.

Senator MELCHER. If you wanted it, if you got the lease, and you wanted it, you could retain it for 10 years. Competitive or over-the-counter.

Mr. KEATING. Yes.

Senator MELCHER. Is it not true that even something you are really interested in, it is sometimes pretty hard to get any drilling done in five years?

Mr. KEATING. Absolutely. That is correct.

Senator MELCHER. I think this idea that there are a lot of people that want to bid $20 an acre is a very foolish myth. I do not know very many people like that.

But you tell me, have you bid $20 an acre on anything in the last two years? Probably not. You have not had a chance.

Mr. KEATING. Senator, not that I can recall.

Senator MELCHER. Well, on private or Federal?

Mr. KEATING. Correct.

Senator MELCHER. When was the last time you bid $20 an acre on anything? When oil prices were high. Forget about the last two years.

Mr. KEATING. On a prospect basis, we will certainly bid as much as we can stand.

Senator MELCHER. When was the last time?

Mr. KEATING. It will not be the bidding process, it will be private negotiations, and we would certainly go higher than $20. But——

Senator MELCHER. When was the last time?

Mr. KEATING. Six months ago.

Senator MELCHER. Six months ago? On private?

Mr. KEATING. Private.

Senator MELCHER. All right. Is that very common?

Mr. KEATING. Senator, only on a prospect basis, not the type of leasing I do not believe we are talking about here.

By prospect leasing means very confined areas that are ready to be drilled, which is why you are willing to pay the price because you have already made a considerable investment in the prospect.

Senator MELCHER. On private land.

Mr. KEATING. Yes.

Senator MELCHER. Like 160 acres, or what?

Mr. KEATING. Yes. Three hundred and twenty, 640. But normally pretty confined.

Senator MELCHER. And what is the deal you have got on the surrounding land?

Mr. KEATING. Again, it depends on the prospect, we are talking about two different things here.

Senator MELCHER. I am getting you to talk against CENEX. And I know you do not want to give me any secrets. But I will get out of you as much as I can.

Mr. KEATING. Okay.

Senator MELCHER. When you give somebody for a half section $20 or $40, that would be $12,000, if it was a half section, a little over $12,000.

Have you not tied up some of the private land surrounding it for about as far as he has any private land?

Mr. KEATING. We certainly have. Yes.

Senator MELCHER. For what? How much?

Mr. KEATING. Whatever the market value is.

Senator MELCHER. Well, like $1?

Mr. KEATING. Yes. Certainly.

Senator MELCHER. In other words, you are going to give them for one year, whenever you are ready to drill, and you do not have all this much red tape to do it on private land, you are going to give them a pretty good chunk just for 160, 320, or one section?

Mr. KEATING. Selected tracts.

Senator MELCHER. And you have tied up all the way around it, what?

Mr. KEATING. We believe we have tied up the prospect, Senator. And that is the land——

Senator MELCHER. You are not going to go in there and drill that well unless you have tied up a range around there, so if you get any production you are going to get a return on your investment, are you?

Mr. KEATING. That is correct. Yes.

Senator MELCHER. And that is about $1 an acre. Is it not?

Mr. KEATING. Yes, sir. Depending on the area.

Senator MELCHER. And just $1 an acre as a standard, I will give you $1 an acre and have an option for nine years more, at $1 an acre.

Mr. KEATING. Yes.

Senator MELCHER. That is a willing buyer and a willing seller. And I guess our problem here is, how do we determine what is prudent for the Federal Government in being that willing seller?

I have gone as far as I can in the bill I introduced. I just cannot buy this idea of going to simultaneous, or getting a system devised where we are about in the same boat as we are in now.

Senator Bumpers?

Senator BUMPERS. Do you bid on any lands belonging to the State of Montana?

Mr. KEATING. Yes, we do.

Senator BUMPERS. Do you have to bid competitively on that land?

Mr. KEATING. Yes, we do, Senator.

Senator BUMPERS. Does that system work okay?

Mr. KEATING. Yes, it does, because there is no minimum bid. The minimum bid is comparable to the annual rental.

Senator BUMPERS. So in Montana, if you want to bid on State lands there, all lands are put up on a competitive basis, are they not?

Mr. KEATING. Yes.

Senator BUMPERS. Incidentally, Mr. Keating, you have been sitting here this morning. You know that every State in the Union requires competitive bidding on all lands that the State owns?

Mr. KEATING. Yes, sir.

Senator BUMPERS. Are you familiar with all these caes we have cited? For example, in one instance down in Arkansas, the State of Arkansas had 80 acres of mineral rights. They did not own any of the surface, but they owned 80 acres of mineral rights in the Oachita National Forest.

BLM put up 2,000 acres of its land for $1 an acre. In the State of Arkansas, about eight times that much was received just for its 80 acres. Because it had put up its mineral interest on a competitive basis.

And obviously, where you have competitive as against noncompetitive, you are always going to have those kinds of strange results, would you agree?

Mr. KEATING. Yes, sir, sure would.

Senator BUMPERS. Do you consider yourself a conservative businessman?

Mr. KEATING. I do.

Senator BUMPERS. Would you like to see Senator Melcher and me handle Federal money the way we would handle our own money, if it belonged to us personally?

Mr. KEATING. I think I would.

Senator BUMPERS. Would you also like to see us handle the Federal lands that belong to you and all the other taxpayers the same way? Or do you think that comes in a separate category?

Mr. KEATING. No, I do not. I think I would like to see that.

Senator BUMPERS. And when you negotiate with private owners of land in Montana, you have to bid—maybe not in an open bidding—but you have to give more than somebody else is willing to give in order to get that from a private individual, do you not?

Mr. KEATING. Yes, we do.

Senator BUMPERS. And is that not what this country is founded on, that kind of a situation?

Mr. KEATING. Yes, sir, in the absence of a minimum bid.

Senator BUMPERS. So can you think of any reason why the Federal Government ought to lease lands for a dollar an acre, when it is obvious that some of it is worth $100, $200, $300 an acre?

Mr. KEATING. No, I do not see any reason why they should.

Senator BUMPERS. Do you realize that Senator Melcher's bill, 1388, exempts about 50 percent of all Federal land that is now or probably ever will be available for leasing, it exempts about 50 percent of that on the front end so that it can never be let competitively.

Did you know that?

Mr. KEATING. No, sir, I did not.

Senator BUMPERS. So when you are talking about an all competitive system, and you are taking 50 percent of the lands out in the beginning, that is not exactly an all competitive system, is it?

Mr. KEATING. If that is correct, no.

Senator BUMPERS. I have no further questions. I see Senator Melcher is gone for the time being.

Let me just ask you this question, Mr. Keating, while we are waiting for Senator Melcher.

Would you like to see all the lottery system done away with?

Mr. KEATING. Yes, I would.

Senator BUMPERS. Senator Melcher, as you know, as I say, exempts half of the Federal lands available for what we call OTC, and normally, when we think of OTC—this is not precisely correct, but what we normally refer to here is, that that land is available on a first-come first-serve basis.

Mr. KEATING. Yes.

Senator BUMPERS. Is that what you like? Is that what you are defending?

Mr. KEATING. Yes. Sir, if there is no bid for the land, if there are no bids for those leases, then I certainly believe they should be left for over the counter, because then it will be industry people that will be putting those leases back into play again.

Senator BUMPERS. Well, my bill does that. In other words, if there is no competition for it.

Now, $20 minimum bid is admittedly an arbitrary figure.

Mr. KEATING. Yes, sir.

Senator BUMPERS. I mean, there is nothing sacred about the $20. If we want to move it to $15, I have no objection to that.

What we are trying to do are two or three things. We are trying to make sure that we promote oil and gas development, and if somebody really wants to wildcat and take some land that does not have very much prospect, they are probably going to get it for $1 an acre, under my bill or his.

But if there are lands, for example, under his bill, if somebody had a lease, and it was part of this land that was exempt, and they found a Prudhoe Bay type find, the lands around it could never be let competitively because they're exempt if we pass his bill.

Those lands are exempt on the front end, and it would not make any difference if they had 80,000 barrel a day gushers out there, we would still have to lease the lands adjoining it for $1 an acre.

That seems like a strange result to me. Does it not to you?

Mr. KEATING. Yes, sir, I guess it would be. But as an oil and gas operator, I would not see those lands being available for lease after a discovery.

Senator BUMPERS. Well, unhappily, under 1388, they would be. And they would be available on a noncompetitive basis, first-come, first-serve.

Mr. KEATING. I believe the industry would already have those lands under lease, and that is one of the reasons they would be there in the first place, is because the lands were available for lease, which would establish a lease block worthy of that kind of an exploration program.

That is why I believe that prompts and encourages exploration.

Senator BUMPERS. Are you familiar with the Amos Draw situation?

Mr. KEATING. Yes, sir, I am.

Senator BUMPERS. Well, you realize that the lands around that had not been leased. And the oil and gas industry did not have that land under lease.

Mr. KEATING. Sir, the reason they did not was because the BLM was trying to determine whether or not they were KGS. And they were on the SIMO list, and not available.

And our companies had those same circumstances, where we have drilled wells offsetting unleased Federal lands because they had not been classified as lottery or KGS, and for the remainder of the prospective investment, we could not afford not to drill.

So we continued with our operation. We have done two of those in the past two years.

Senator BUMPERS. Well, the point I was going to make is, even though that land had not been leased, that is sort of like Ft. Chaffee, the reason Ft. Chaffee hadn't been leased was because there was a prohibitation against leasing military reservations.

Mr. KEATING. Yes.

Senator BUMPERS. And we had a terrible result, just as we had a terrible result at the Amos Draw. Just as we have a terrible result down in the Ouachito.

And it is all of those things that we are trying to deal with here.

Mr. KEATING. I understand. However, Senate bill 1388 does correct that, because it provides that any lands that were not previously available for lease must come up for competitive bid, not over the counter.

And I believe that is what happened in Ft. Chaffee. We consider that a correction.

Senator BUMPERS. Well, that is true. But when you eliminate half of the Federal lands at the outset, it seems to me that——

Mr. KEATING. Senator, I guess I have a little trouble with that statement, because I am not sure where those lands are, or why we would have to insist that half of these lands are going to have a greater value over the counter.

That one bothers me a little.

Senator **Bumpers**. It bothers me a lot worse than it does you, Mr. Keating.

Thank you very much.

Mr. **Keating**. Thank you.

Senator **Melcher**. Well, one thing I should add there, unless you identify lands that you are talking about, half of—if we are saying half of the Federal lands are withdrawn, and cannot be leased, because of various reasons, I think that would be a high figure.

If we are saying that of those that can be leased, and are not withdrawn from mineral entry, that half of them have not received a over-the-counter bid, there must be all sorts of reasons for that, because they would be available first-come first-serve.

All you would have to do is walk in and say, I want this track, and plunk down the money.

So I think there is no need for us as a committee to be operating in the dark. For the good of all of us, I will ask the staff to produce the total of Federal lands that have been withdrawn, number one, and are not available for lease under any circumstances; and number two, those lands that would be available for lease, but nobody has ever wanted to pay the buck an acre to lease them.

We do not have to operate in the dark here on boogies that do not exist.

All right, thank you very much, Joe.

Mr. **Keating**. Thank you.

Senator **Melcher**. Ken Wonstolen, Executive Director and General Counsel for the Independent Petroleum Association of Mountain States, accompanied by Stephen Smith, Public Lands Chairman.

STATEMENT OF KENNETH A. WONSTOLEN, EXECUTIVE DIRECTOR AND GENERAL COUNSEL, INDEPENDENT PETROLEUM ASSOCIATION OF MOUNTAIN STATES, ACCOMPANIED BY STEPHEN SMITH, CHAIRMAN, PUBLIC LANDS COMMITTEE

Mr. **Wonstolen**. My name is Ken Wonstolen. I am the executive director and general counsel for the Independent Petroleum Association of Mountain States. We go by IPAMS.

With me today is Stephen Smith, my public lands chairman, and an independent oilman from Denver.

We appreciate the opportunity to provide you with our input on this important issue today.

Let me preface my remarks just to respond to some of the questions I have been hearing coming from the panel that IPAMS is not opposed to a leasing system which features competitive bidding.

The current leasing system of course requires competitive bidding in the KGS areas. And we recognize that any leasing system needs to have a competitive bidding feature.

What we do insist on is that there is a viable noncompetitive tier as well, and in that regard, we do think there is some significant differences between S. 1388 and S. 66, and Steve Smith will address those in more particulars.

We also do not feel that a legislative fix or a change to the way in which leases are let competitively can be done risk-free. And we see two major areas of concern.

One is that the uncertainty of going to a new system of letting leases competitively will undoubtedly upset the competitive balance between majors and independents, and we just do not know how that will shake out. But that is an element of uncertainty to a rather distressed industry that is troublesome.

The second area that we have unanimous agreement on in the industry is that there is a great danger that opening the mineral leasing act will lead to the installation of new environmental restrictions.

I know that both of the Members here at the hearing today have indicated that they will keep their bill clean of such restrictions. But it has been made abundantly clear that any legislation on this matter, in the House, will be burdened down with environmental restrictions, with which industry cannot live.

And we think that is a major concern which says that we should look at administrative changes before going into opening up the mineral leasing act.

We do feel that the current problems have largely resulted from administrative failures, and those have been in two main areas.

One is abuse of the SIMO, and we have heard about that today. Mr. Bumpers was somewhat incorrect in his characterization of the SIMO system as it runs today. You cannot simply send in a $75 filing fee. You also have to submit a $1 per acre advance rental, and that has substantially reduced, we believe, the abuse, the fraudulent abuse of that system.

In fact, when that change was made, and the SIMO was reinstituted with the advance rentals, the number of applications dropped 60 percent.

Interior is now going back out to ask why the SIMO is drawing such little interest.

We also think that there are existing consumer protection and investor fraud laws which could be aggressively enforced to take care of any remaining problem in that area.

The second problem area, and I think it is more troublesome, is the KGS. We have heard about the Ft. Chaffee and the Amos Draw situations. Those were both anomalies. They were lands that were withdrawn from availability. They were subsequently made available without adequate analysis of the geology and the competitive situation.

Those were failures. They could be solved administratively however.

The National Academy of Sciences studied this issue and said that there were ways for Interior to upgrade that process and avoid those situations in the future. And we would support such action by Interior.

We do have a problem with the way Interior has responded to those criticisms. What they have done, basically, is to delay making KGS determinations. They have failed to issue leases while they reconsider KGS status. And they have recently distorted the KGS concept with no geologic basis to cover entire basins.

This is an intolerable situation. It has to be changed.

We believe that given the risks that would be involved in opening up the Act itself, that perhaps a better course for you would be—and using the budget process perhaps—direct Interior to upgrade and revamp its KGS procedures to adopt the NAS recommendations.

As well, we would like to see them include three elements that are featured in both of the bills. Elimination of sealed bids in favor of oral bidding. Elimination of sliding scale royalties in favor of flat royalties. And elimination of any post sale value determinations.

We think those are positive elements from both bills, which could be done administratively. There is nothing in the present mineral leasing act that would keep those from going into place.

We do recognize, however, that it is your prerogative to reconsider previous legislative enactments. And it is undoubtedly true, as the National Academy of Science has concluded, that there will always be some errors in KGS classification.

Can we live with those, given the risks of opening up the mineral leasing act? That is your decision.

If it is determined that you have to go in and change the system, there are five features, common to both bills, which we think are paramount, and which we think should be maintained.

Those are avoidance of new environmental restrictions. Retention of noncompetitive leasing—and Steve Smith will get into the difference between the two bills and how they do that. Reliance on oral bidding. Institution of a flat royalty rate. And elimination of post sale value determination.

Those are five common features to the bill which must be included in any legislative fix to the system.

I would be prepared to discuss any of those in more detail pursuant to your questions.

At this point I would like to ask Steve Smith to talk in more detail about the noncompetitive leasing aspect, which is of such vital importance to the independents.

Mr. Smith. Mr. Chairman, thank you for the opportunity to address this Committee on a matter that is of vital importance to oil and gas producers all over, but particularly in the Rockies, where most of the Federal lands are.

I am going to focus my comments on the way these two bills treat the over the counter leasing system, which is a very workable system that has not been the source of the problems in our opinion, given—or excluding lands which were withdrawn from leasing, such as the Ft. Chaffee incident.

And we would agree that lands which have not been continuously available for leasing to the first qualified applicant should go through a competitive test, should one of these bills, or some combination, be instituted.

Just to take a look at each bill and how the main elements would work in this regard, S. 66 substitutes a minimum bid test for the geologic determination for which lands should be leased competitively.

Anything receiving a $20 an acre minimum bid would be leased competitively; anything that did not would fall to a noncompetitive tier which, as it has been explained to me, would include a simultaneous drawing phase, and anything that was not leased in that phase, would then revert to over-the-counter availability to the first qualified applicant.

This approach would result in less competitive leasing because of the $20 minimum bid, and would preserve a meaningful role for the SIMO, if that's the intent of the Congress.

S. 1388 substitutes what we could call a market test with a $1 per acre minimum bid. For all practical purposes, that would eliminate the SIMO. And then any lands not leased would be available for over-the-counter leasing to the first qualified applicant.

IPAMS does not take a position regarding which of these approaches is preferable. However, in the area of over-the-counter leasing, which is the procedure by which lands that have not been leased for oil and gas initially enter the leasing system on a first-come first-serve basis, by the payment of a filing fee and an advance rental.

IPAMS believes S. 1388 is preferable. 1388 would preserve the OTC system in its current form, without subjecting lands to an additional minimum bid test prior to issuance.

And a recent survey of our membership indicated that 72 percent of the respondents favored keeping OTC lands out of a competitive sale process, thus preserving continuous access to frontier exploration prospects.

It is these unexplored and remote areas where OTC leasing typically takes place that is the lifeblood of many independents who traditionally drill 90 percent of the Nation's wildcat wells.

It is also these wild and remote regions that often offer the greatest prospects for significant oil and gas discovery, particularly on shore.

Under the current system, upon termination of a lease, originally granted under the OTC phase, because each lease starts out at that phase, upon termination or expiration of that lease, the lands are offered in a simultaneous drawing, or, if they're in a KGS, they're offered in a competitive sale.

If the lands are not in a KGS, and therefore, offered SIMO, and they don't draw enough interest to receive even one application, then they become open and available to leasing again to the first qualified applicant.

If they're leased subsequent to that, they reenter the system, and upon termination or expiration of that lease, they again go through the test, that is, either the geologic KGS test, or the SIMO test, to see if they will either fall within a geologic KGS or receive SIMO application.

And thus, you have a complete leasing loop. Lands enter the system through the OTC. When they have been leased, they cannot be leased again OTC until they have been through a test, either a geologic test or a SIMO test, or both.

Under these proposed bills, they would go through either the minimum bid test or the market test.

The problem that we see with S. 66 in the OTC area is twofold. One is, forcing all newly applied for OTC lands through the minimum bid test prior to lease issuance as well as after expiration or termination of the initial lease.

So all OTC lands are going to go through the competitive test, but we believe the proper time is after the termination of expiration of the lease; and two, forcing lands back through the minimum bid test after they have already failed that test once upon lease expiration, possibly only after a little more than a year.

Forcing these lands through this extra competitive test over and above the test that they all will go through on expiration or termination destroys the complete loop of land availability by adding two additional minimum bid SIMO tests, which we believe all lands should go through upon termination or expiration.

Some of the reasons that OTC lands should not be subjected to these extra tests include the following.

One, the OTC system is a good workable system. It has not caused problems except in the case of lands that were not continuously available to the first qualified applicant, and this would include the Fort Chaffee type situations.

I think it is important to remember that the Amos Draw incident did not involve over-the-counter lands. It involves SIMO lands. These lands had already been leased at some point, and they had been withdrawn from leasing during a period prior to coming up on a simultaneous drawing.

So we would propose that lands which have not been continuously available for leasing would not be made available for leasing OTC until they had been through a competitive test, thus addressing the Fort Chaffee type problem.

Once leased, then they would be treated like all other lands, and have a test after the expiration or termination.

Number two, OTC lands are daily subject to a competitive test of a dollar per acre, with thousands of exploration companies and independents, although our numbers are somewhat reduced these days.

OTC lands are leased at the time they become worth a dollar an acre to someone, thus, never having the opportunity to sit open for years and become more valuable, as may be the case with withdrawn lands.

Three, subjecting the lands to an additional competitive test will hinder the strong incentive to lease Federal lands first which assembling exploration plays. These exploration plays, as has been mentioned earlier, necessitate large blocks of land to economically justify drilling the rank wildcat prospects.

And when there are open Federal lands, over-the-counter available lands, in one of these wild prospect areas, they are always the first to be leased. There is an incentive to be there first, and I believe this causes the leasing of possibly millions of more acres at times, because of that incentive to be there first.

And under the current system, if you want to put a block of leases together to justify drilling a well, you can go file applications on the Federal land, knowing that you have priority applications on those lands, and then proceed to make additional investment in intermingling B lands or State lands.

You can make an investment in other types of exploration costs, because you know that—you are assured that you have priority on those parcels, and if they issue, they will issue to you.

Senator **Bumpers**. Mr. Chairman, I am going to have to leave. Would it be permissible to interrupt for one minute to ask one question?

Senator **Melcher**. Certainly.

Senator **Bumpers**. Well, make that two questions.

Let me ask you first of all, if you had a 1,000-acre tract of land that you thought might or might not have oil or gas under it, would you lease it to the first guy that offered you a dollar an acre?

Mr. **Smith**. If I had as much as the Federal Government does, I would lease that land.

Senator **Bumpers**. Can you answer that question, yes or no?

Mr. **Smith**. I would make an evaluation as to whether I wanted to accept that. And if I thought that was an offer I wanted to accept——

Senator **Melcher**. Do you own any land? Let us establish what the circumstances are. Do you own any land?

Mr. **Smith**. Well, I own a lot of oil and gas leasehold interest.

Senator **Melcher**. He is asking you as a landowner.

Mr. **Smith**. No. Well, I own some land, but I do not really have any significant mineral rights in those lands.

Senator **Bumpers**. The values change from time to time, do they not? For example, back in the forties and fifties, where I come from, land was ready to lease for $1 an acre, and I come from a poor area, and people were tickled to death to get $1 an acre.

In the 1970s that went up as high as $1,000 an acre bonus bid. Now it is back down to about $100.

Mr. **Smith**. Well, that varies significantly.

Senator **Bumpers**. That depends on what the market for oil and gas is. But under S. 1388, let me ask you this question.

You said that it would eliminate the Amos Draw type situation. And I am not so sure that is true. Let us take a case under S. 1388 where BLM puts up a 1,000-acre tract of land.

And it does not get a $20 bid, so it goes back to OTC, where it remains. And let us assume that it remains there for 10 years, and nobody has bid $1 an acre on it, so it is still just sitting in their inventory, available for OTC leasing.

And let us assume further that sometime during that 10- or 12-year period, that somebody makes a very significant find in the vicinity.

The value of that land might go up for leasing purposes to $1,000 an acre. But under S. 1388, because it had not been leased after it was put up for competitive bids, would still have to go for $1 an acre over the OTC counter.

Do you think that is fair?

Mr. **Smith**. Well, there are a couple of things I would like to say.

One is, it is my understanding under S. 66 that if the land did not get a minimum bid, it would not go directly to OTC. At least, the implementation, as envisioned by the Department of the Interior, it would go to a SIMO.

Senator **Bumpers**. No, under S. 66, it does go back to OTC.

Mr. **Smith**. Does it not go through a SIMO? Or would it not require SIMO——

Senator **Bumpers**. It depends on where it came from. It would depend on where it came from.

You heard the questions this morning. We have asked BLM to give us a definitive answer as to how they would do that. But right now, we will have to clean that up when we go to markup on that to make sure everybody is clear on that.

But if it came out of OTC, and it did not get a $20 bid, it would go back to OTC.

Mr. **Wonstolen**. Senator, I think there are two points to be made on the final question you put there.

The scenario you paint is extremely unlikely. No one goes out and drills a rank wildcat prospect with open, unleased Federal land surrounding them.

The leasing place are moving out 10, 20, 30, 100 miles away.

Senator **Bumpers**. But that is precisely the Amos Draw case. They did drill Amos Draw with a lot of unleased land around.

Mr. **Wonstolen**. But that land was not continuously available. That land should have gone through some test before going into the noncompetitive tier; there is no question about that.

And both of your bills would provide for that. Your bill that passed last year provided for a transitional period similar to what would be an ongoing exemption in Senator Melcher's bill.

The other point is that the Secretary does have discretion under the law, in the very unlikely circumstance that you paint, to refuse to issue an inappropriate lease.

And that discretion has been upheld by the Supreme Court in the case of *Udall* v. *Tomlin*. I think that the very unlikely scenario you draw is not sufficient reason to disrupt the OTC system as it works very well today; that is our point.

Senator **Bumpers**. Well, what we are trying to deal with here——

Senator **Melcher**. Dale, yield to me at this moment, because you have been painting my bill with a broad stroke with the wrong paint.

Senate bill 1388 does not change that discretion of the Secretary. What you have been describing continuously has been somehow that there be some great potential in that the Secretary would be powerless to say, oh, well, that's over the counter, rather than stepping in prudently and saying, well, that would be an inappropriate lease; it obviously has more value than that; and then go back into using his own authority, go right back into competitive bidding.

Secondly, maybe we need to draw a line in the United States. But you have been describing $100 leases, per acre, as if it applies to our part of the world.

There are no $100-an-acre leases. There were no $100-an-acre leases when oil was up to $35 or $40 a barrel. If there were, we would not have any agricultural problem with landowners out there. They would all be sitting with great money in the bank, just forgetting about any farming or ranching operations.

They could lose a whole lot every year.

Mr. **Wonstolen**. Senator, another response to your question about would I or Steve lease 1,000 acres at $1. We are not in the position of the Federal Government.

You have millions and millions of acres at stake. Ninety percent of the revenues from the oil and gas leasing system come from royalties.

It is to the advantage of the Federal Government, as trust holders for the people of this country, to get those leases out, get them drilled and explored for, and get production established on those leases.

And I think it is appropriate in OTC areas to give those leases to the first person who wants to spend $1 for them. They are probably not worth a dollar.

But someone is out there with a geologic idea, and they are willing to put that dollar down. And I think we ought to encourage that, get those leases drilled, and get some production possibly on them that will help the domestic energy security of this Nation, and it will help the revenue stream from oil and gas leasing.

Senator BUMPERS. Why do you think not one State nor one private individual in this country sees it that way?

Mr. WONSTOLEN. Well, the States do not have minimum bids over $1. Their competitive systems are at $1 an acre, sir.

Senator BUMPERS. I say, why do you think they do not see it just in terms of royalty, in terms of bonus bids, or both?

Mr. WONSTOLEN. I think they see it in terms of both.

Senator BUMPERS. Why should we not?

Mr. WONSTOLEN. I think you should. I think you should design a system, if you are going to design one, that encourages getting those leases in the hands of people who will drill them and try to find some production.

And the fewer roadblocks you can put in place of that, the better.

Now the one-year recycle is a roadblock. That lease would have gone through a competitive test, failed to get the minimum bid, dropped back out in that year, and someone wants to go spend a dollar on it at the end of a year, it has got to run back through a test, maybe 90 days away, 6 months away, whatever.

His geologic idea is exposed to scrutiny. It is just going to backlog the system, disrupt the way the industry is going to get those leases drilled.

Senator BUMPERS. I want to clarify one thing about Senator Melcher's bill, because I may be wrong about this, John.

But I was under the impression that once OTC land is put up competitive, and does not receive a $20 bid, it goes back into the OTC inventory

Mr. WONSTOLEN. Senator Melcher's bill, it would be a $1 bid.

Senator BUMPERS. Well, yes, $1 under his bill. It goes back to the OTC inventory, where it may not be let competitively again until it has been leased under the OTC system.

Mr. WONSTOLEN. Well, there is a difference in terms here. What you are saying is, it may not go through the competitive test that is established in these bills. But our position is, it is undergoing daily competition at that point.

It is out there for the first taker at $1 an acre. The competitive aspect is, when is someone willing to pay that dollar. That is a competitive event.

Senator BUMPERS. Well, now using the scenario I gave you a moment ago, if somebody found a significant find in the area, it would be worth $1 an acre then, would it not?

Mr. WONSTOLEN. If someone found a significant find, most likely the Federal lands for a 100-mile radius have already been leased up years in advance.

Senator **Bumpers**. A hundred mile radius?

Mr. **Wonstolen**. That is very possible.

Senator **Bumpers**. Are you telling me someone wouldn't drill a well unless they had everything leased within 100 miles?

Mr. **Wonstolen**. I am not saying that individual would not. But there are other players in there who would have gone out well in advance of that well being drilled and taken a chance on some of that very rank acreage, quite a long distance away.

Now, maybe not 100 miles today, with the state of the industry, and the contracting lease inventory.

Senator **Bumpers**. My point is very simple, and I just want this clarified for my own edification.

In the hypothetical case I gave you a moment ago, if there is a significant find, and this land has not been leased, or it is still in the OTC inventory, it may not be let competitively, I do not care if the wells are drilled right next to it, it cannot be let competitively; is that not correct?

Mr. **Wonstolen**. I think that—I am not sure that is correct. Because the Secretary does have residual discretion under the act.

Senator **Bumpers**. But I am just saying that under Senator Melcher's bill, he does not have that discretion.

Mr. **Wonstolen**. I am not sure Senator Melcher's bill takes away that discretion.

Senator **Bumpers**. Well, that is the way we read it, and that is the reason we have these hearings.

Senator **Melcher**. Let the author clarify it, if I can.

We do not change anything, in 1388, the discretionary authority of the Secretary.

Senator **Bumpers**. Are you telling me that the Secretary could then lease that land competitively, even though it had not been through the OTC leasing system?

Senator **Melcher**. Yes, if the circumstances warranted, he could. Because we have not changed his discretionary authority, where he would find that a lease was not—simply was not appropriate.

He would still retain that authority. Now, that is the way I read it.

Mr. **Wonstolen**. You may wish to have the solicitor for the Interior Department confirm that question for you.

Senator **Bumpers**. Well, it is certainly a point worth clarifying. I will say that. Because it has been my impression all along, that once under Senator Melcher's bill—and there are some things I like about his bill better than I do mine.

Mr. **Wonstolen**. I think you are right, in the general case.

Senator **Melcher**. What my bill does not do, and it does this very deliberately, it does not set up a weird procedure that is complicated to allow this BLM and this Department of Interior and probably the same under any admninistration, to have to jump through the hoops to get that land leased.

Now, that is what it does not do. But it does not change the Secretary's discretion in refusing to lease, because there are overriding reasons why he should not lease.

One thing, Dale, I would want to answer your question as a landowner, because I earlier did it for Burford, and used him for the sounding board.

Burford said that prior to entry into government that he had 5,000 acres leased for a buck, a buck bonus for that one year.

Let me tell you that a prudent landowner, and we have got a few hundred acres, maybe a total of 450 acres, which is nothing in acreage in Montana, but the time that that has been leased is a very insignificant percentage of time that we have owned it.

If we thought there was one possibility of writing to half a dozen or two dozen people and saying, we have got some land to lease, what do you bid, we would do it.

There is no reason to do that. If someobody comes along and says, you want to take a buck an acre a standard bid, we would take it. It is that simple.

Now, that is Montana land. All of the rest of this land that we are talking about in Colorado and Nevada, New Mexico, Montana, Wyoming, it is about all in the same category, it is private.

If somebody has got a buck and they can get it out there, they are going to lease an awful lot of private land. And if we could get $2 an acre, we would figure we are in clover.

And mind you, we are probably only going to get the buck for one, two or three years, because hardly anybody leases this private land and pays to get it on the standard lease.

And they pay the buck the first year, and maybe you never hear from them the second year or the third year. Hardly ever any of those ever go to the full ten years, just for the buck.

Did you finish your testimony?

Mr. SMITH. I actually have a little bit more. If you do not mind, I will finish it.

Senator MELCHER. I have read through your testimony, unless you are varying from what you have submitted, are you?

Mr. SMITH. There is some variance here.

Senator MELCHER. The whole statement will be made part of the record.

Mr. SMITH. I would like to make the point that the scenario that the Senator is pointing out of someone drilling next to open OTC lands, as a practical matter, just does not happen.

As an oil and gas producer, if I was going to drill a well, I would not do it if there were open lands offsetting it, and I think that is pretty much standard industry practice.

Also, these plays tend to move over large areas, as Ken pointed out. The leasing in the late 1970s, leasing spread through the folded belt of western Montana for hundreds of miles in advance of drilling.

And I think this is the typical way that an exploration play proceeds in these frontier areas.

And one key point that I would like to make about OTC leasing, as an independent for me to develop a geologic concept in a wild area, go out and file applications on open Federal land, and then have those—have that shopped around to everybody in the business is going to be a big discouragement for me from putting together wild exploration plays.

I would liken it to—well, I think the problem that can happen is that if this land is shopped around for a competitive test after OTC applications, and some speculator, whether it's a company or an individual, comes in and buys a key tract, he could buy a key tract that could pretty much destroy my ability to get that block drilled, if he was not of a mind to drill a well.

And I think that that situation could be somewhat likened to an inventor working on developing some invention, taking the prototype into the patent office, and having the patent office shop his idea around to all his competitors and see if anybody will bid some money for it before issuing him the patent.

And these lands, they are open and available to the first person that files on them, and I believe that causes a tremendous amount of acreage to be under lease that would not be.

And while there may be an isolated occasion—but I think I need to keep pointing out that Amos Draw was not an OTC matter. It was a SIMO matter and a KGS matter. It did not involve OTC lands.

So I would like to make one other point, and that is that the American Association of Petroleum Landmen, which I'm a member of, is a 9,500 member national—actually international—professional organization of oil and gas and mining land men.

They passed a resolution last year that addressed changing the leasing system legislatively, and I would like to provide that for the record. I do not have it with me right now, but it made four strong points, or four points strongly.

One was, nothing should be done if additional environmental burdens were to be added.

It strongly supported oral bidding.

I supported royalties based on values actually received in arms length transactions.

And it strongly favored retention of the existing over-tne-counter leasing system.

And that concludes my testimony.

[The prepared statement of Mr. Wonstolen follows:]

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• *Executive Committee*

TESTIMONY OF THE
INDEPENDENT PETROLEUM ASSOCIATION OF MOUNTAIN STATES
TO THE
SENATE SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION

JUNE 30, 1987

Kenneth A. Wonstolen Executive Director and General Counsel	Stephen Smith Chairman, Public Lands Committee

IPAMS has long maintained that legislative reform of the onshore oil and gas leasing system entails two significant risks:

- upsetting the competitive balance between independent producers and the major oil companies;
- providing an opportunity for the installation of new, unnecessary and burdensome environmental restrictions.

Further, it is IPAMS' position that problems with the current system have resulted from failures of administration rather than from defects in the Mineral Leasing Act of 1920.

The "problems" have occurred in two areas, both addressed by S66 and S1388. The first is abuse of the simultaneous lottery system (SIMO) by fraudulent filing services, so-called "boiler-rooms".
This problem has been largely ameliorated by administrative changes which raised the filing fee to $75 and which require the deposit of first year rentals with SIMO applications. Upon resumption of the SIMO following these changes, the number of applications dropped 60%. IPAMS believes that existing consumer protection, investor fraud and deceptive trade practice laws should be aggressively enforced to eliminate any remaining abuses.

The second area of contention is more problematic -- Known Geologic Structure (KGS) designation. Two highly-publicized incidents, referred to as "Amos Draw" and "Fort Chaffee" have highlighted deficiencies in Interior's KGS determination procedures. In both cases, previously-withdrawn lands were made available for non-competitive leasing without adequate analysis of the underlying geology, taking into account surrounding development which had occurred during the period of unavailability.

This breakdown of Interior's KGS procedures is amenable to administrative remedy, as confirmed by a report by the National Academy of Sciences. This report states that "the present KGS provision ... can be successfully implemented... by providing for a professional interpretation of readily available information and the exercise of sound... judgement by qualified earth scientists." For example, KGS determinations could be performed by a central facility, staffed by competent USGS personnel. In addition, the American Association of Professional Geologists (AAPG) has offered the assistance of its 35,000 members and 70 year reservoir of scientific experience in reviewing KGS analyses.

Unfortunately, Interior has reacted to KGS criticism through interminable delay in making KGS determinations; failure to issue non-competitive leases to successful applicants while

KGS status is reconsidered; and, distortion of the KGS concept to cover entire basins, without geologic basis. This shoddy performance has been characterized as "malfeasance" by a past AAPG President. The situation is intolerable, and an appropriate Congressional response would be to require Interior to revamp and upgrade its KGS process as previously suggested.

Such administrative KGS revision should also incorporate three concepts included in S66 and S1388:

- o elimination of sealed bids in favor of oral bidding;
- o elimination of sliding scale royalties in favor of a flat royalty;
- o elimination of post-sale "value" determinations which may result in the failure to issue leases to high bidders.

Each of these significant improvements to the current leasing system could be accomplished administratively, without incurring the risks inherent in opening the Mineral Leasing Act.

Nevertheless, IPAMS recognizes that it is the perogative of Congress to consider fundamental revision of previous legislative enactments. Further, as the National Academy of Sciences also concluded: "Some errors in (KGS) classification will always occur.... New legislation may have to be considered." If it is Congress' decision that legislative revision is necessary, considering the risks, then S66 and S1388 both contain five features of paramount importance:

1. Avoidance of new environmental restrictions
2. Retention of non-competitive leasing
3. Reliance on oral bidding
4. Institution of a flat royalty rate
5. Elimination of post-sale value determinations

Both S66 and S1388 eliminate the KGS aspect of the current system. S66 substitutes a competitive sale mechanism incorporating an arbitrary minimum bid of $20/acre. This approach would result in less competitive leasing than would S1388 and would preserve a meaningful role for the SIMO. S1388 substitutes a "market test" minimum bid at $1/acre and would, for all practical purposes, eliminate the SIMO. IPAMS takes no position as to which of these approaches is preferable.

IPAMS does find, however, that S1388 would better meet the vital need to preserve continuous industry access to frontier exploration prospects via the "over-the-counter" (OTC) system. It is these unexplored areas which are the lifeblood of independents, who traditionally drill 90% of the nation's "wildcat" wells.

S66 would require these frontier lands to clear the $20/acre competitive hurdle before reverting to OTC availability. Further, the period of OTC availability would only extend for one-year, after which a "recycle" through the competitive tier would be required. These provisions would disrupt the continuous availability of OTC lands for wildcat exploration and backlog the new leasing system. They are a step backward from the version of S66 which passed the Senate last year. That bill contained a three year recycle period and exempted most OTC lands from the competitive sale requirement for a transitional period until 1991.

Even better, however, are the OTC provisions of S1388. Under this approach, currently available OTC lands would remain so, until leased. Upon expiration of the OTC lease, the parcel would be offered via the "market test" before reverting to OTC availability. No arbitrary recycle would be required. This approach recognizes that OTC lands are already undergoing a continuous "market test" -- at $1/acre -- whose "competitive" aspect is the timing of acquisition.

By limiting the competitive sale exemption to currently available OTC lands, future "Amos Draw" and "Fort Chaffee" problems would be precluded. In the highly unlikely circumstance that intense competitive interest might arise in an unleased OTC area, the Secretary has existing authority to deny the issuance of an inappropriate lease.

In summation, it is IPAMS' recommendation, should you deem it necessary to incur the risks entailed in legislative reform of the onshore leasing system, that any bill incorporate the five paramount features listed above (also see Addendum), as well as the OTC provisions of S1388. Further, it is imperative that the Senate conferees be given an absolute directive to reject any alteration of these key elements by the House. Finally, the bill must proceed under a "manifesto" which precludes the addition of new environmental restrictions of any kind.

ADDENDUM -- The Five Paramount Features

1. Avoidance of new environmental restrictions -- While there exists a healthy diversity of opinion within the industry regarding other particulars of lease reform, on this point there is unanimity. As Representative Dick Cheney has testified before the House Subcommittee on Mining and Mineral Resources: "All of the oil and gas drilling that has taken place on federal lands since passage of the Mineral Leasing Act of 1920 has yet to disturb even 1/10 of one percent of the lands overlying the federal mineral

estate" and " of all forms of energy development, it is the least intrusive from the standpoint of the environment and the easiest to reclaim."

Oil and gas leasing and development occur within a comprehensive environmental regulatory framework -- the National Environmental Policy Act, the Federal Land Policy and Management Act, the Archaeological Resources Protection Act, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, the Federal Oil and Gas Royalty Management Act, the Endangered Species Act, and miscellaneous provisions of numerous other laws.

The notion that this plethora of environmental enactments is insufficient to regulate oil and gas activity is laughable. In addition, oil and gas operations are prohibited or restricted on over 300 million federal onshore acres, more than 40% of the public domain. New environmental restrictions, which cannot be borne by the industry, are a transparent attempt to preclude oil and gas development on the public domain by so-called "friends" of the national forest, the tall-grass prairie, the badlands, the desert, the basin and range, and the canyon lands. Congress must reject this misguided effort, which can only result in a domestic energy crisis.

2. Retention of non-competitive leasing --
The Mineral Leasing Act of 1920 provides that federally-owned oil and gas "shall be subject to disposition ... to citizens of the United States...." This directive does not limit availability of leases to large, highly-capitalized oil companies. For many independents, non-competitive leases comprise the bulk of their lease portfolio. The "bottom-line" of "IPAMS Position On Total Competitive Leasing of Public Lands" is that the association "vigorously opposes the adoption of any total competitive bidding system... and resolves itself to work towards the continuation of honest filing systems and selected competitive bidding for the overall benefit of this nation and its citizens."

Further, two studies, by the General Accounting Office and the Department of the Interior, indicate that non-competitive leasing systems generate more revenues than do bonus bids. For example, prior to July, 1983, Wyoming's lease lottery generated revenues averaging $28.86/acre. A year later, after conversion to an all-competitive system, the average had declined to $24.62/acre.

Finally, proposals which focus on up-front bonus bid revenues are "penny-wise and pound foolish." Ninety-percent of federal lease revenues derive from production royalties. Tying up industry funds in bonus bids will result in less acreage leased, fewer wells drilled, and reduced ultimate revenues.

3. Reliance on oral bidding --
Oral bidding is an essential element in any move towards a competitive sale leasing system. Oral bids will reflect the most up-to-date information on geologic prospects for a parcel. Being conducted in the open, under public scrutiny, will ensure the integrity of th process. It will allow industry to avoid leaving "dollars-on-the-table" unnecessarily, thereby tying up capital that could otherwise be expended to drill wells. Finally, oral bidding provides companies with limited budgets the flexibility to re-target their bids if unsuccessful on a particular parcel. This means that bidding budgets are more likely to be spent, and more parcels will be leased. Oral bidding is crucial to independents.

This does not mean, however, that unsealed, written bids could not be used to nominate parcels for oral auction. Such a practice could streamline lease sales. In addition, it may be advisable to allow the submission of written bids by companies unable to physically attend a lease sale. Such written offers could be used to initiate the oral bidding.

4. Institution of a flat royalty rate --
Continuation of sliding-scale royalties would be inconsistent with a conversion to competitive lease sales. Companies must be able to calculate potential lease values, net of royalties, in order to make accurate bonus bids. In addition, a flat one-eighth royalty will cushion the impact to independents of increased reliance on competitive lease sales, as well as serving as an incentive to a distressed industry.

Of course, the royalty rate is oftentimes not as important as the basis for determining the royalty value. The industry has learned this hard lesson via the unfair application of NTL-5, the federal gas valuation standard. Before being amended in 1986, this rule required royalty to be paid on the basis of NGPA maximum lawful prices, even where producers were unable to obtain such bureaucratic "incentive" prices in the marketplace. In some instances, the resulting royalty alone could confiscate the entire gross proceeds from a well.

In order to avoid such absurd results again, it is suggested that language be adopted specifying that royalty be paid on the: "value, at the wellhead, of production saved and sold, based on actual receipts to the lessee under an arms-length transaction, net of post-production costs." It should further be specified that, just as the federal government may, "take" its royalty "in-kind", so may lessees "put" or tender the royalty "in-kind".

may, "take" its royalty "in-kind", so may lessees "put" or tender the royalty "in-kind".

5. Elimination of post-sale value determinations -- Post-sale value determinations would be inconsistent with institution of competitive lease sales at either an arbitrary price or by market test. In addition, such value determinations would be tantamount to continuation of KGS analysis, contrary to the intent of S66 and S1388. Finally, eliminating the possibility of bid rejection would make the shift from current KGS sales to competitive bidding more attractive.

Senator **Melcher**. Let me point out that any association that comes to Congress and says they've conducted a survey that does not have very profound conclusions generally gets the results they deserve; nothing happens.

If there is no real need to amend the leasing policy, we have got other things to do. And if you have got a position that is worth instructing us on why amending the law would get some good results, we would like to hear it.

I think the testimony is sort of six of one and half a dozen of the other. And all that says to a committee like this is that, really, leave it alone, Go on to other things.

Thank you very much. If you have got a positive statement on why you need some changes, that the association has given you a ringing endorsement on, let me know.

David Schaenen, representing the Independent Petroleum Association.

Dave, we will make your entire statement part of the record, and please just summarize whatever your position is.

STATEMENT OF DAVID SCHAENEN, REPRESENTING THE INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA AND THE ROCKY MOUNTAIN OIL AND GAS ASSOCIATION

Mr. **Schaenen**. Well, thank you, Senator. I will not burden you with reading the statement, because much of what I would have said has already been said.

I am representing both the Rocky Mountain Oil and Gas Association and the Independent Petroleum Association of America.

I have been involved with both associations for a long time. I have been involved with this problem of competitive versus noncompetitive for roughly 25 years, which is about the time that some of the staffs began reviewing the problem.

It has been mulled over by many subcommittees. It has been the subject of several GAO reports. And I think that if there is one thing that does not have unanimity in the industry, it is this problem.

I think that majors and majors cannot agree; independents and independents cannot agree; majors and independents cannot agree.

We talked to some people yesterday. One person wanted one thing; one person wanted another thing. And they were both independents.

I think one thing that we are all concerned about is the current position of the industry as it affects the world marketplace, and the need to come up with a viable leasing system that will permit the industry to go forward under rules which they can understand, and which will not be constantly changed.

You mentioned yourself that in our home State of Montana we only have five rigs running, and I think that is a deplorable position for the industry to be in.

We do agree with some things in both bills. We are in total agreement with that type of bidding. We are in agreement with the fixed royalty rate.

We are in agreement with the lease size. We can argue either way on these issues, because many of us have been in the industry long enough to understand both sides of the fence.

And I really think what it comes down to is that when you have concluded your deliberations, we hope that the Congress and right now the Senate will provide the industry with a leasing system that will continue to make lands accessible to the industry; that lands will not be held off the books so that they are unavailable for leasing; and that the Congress will agree that we do not need any additional environmental restraints against our operations.

I think if you will look at my testimony you will note that there are some charts at the end of the testimony which will give you an idea of what we have to go through in the land management planning process and the permitting process and the leasing process.

And there are innumerable areas for public comment. There are quite a few environmental analyses. And we feel that the current regulations and statutes provide ample authority and discretion for the Secretary of the Interior to lease areas if he feels that it is not in the public interest.

I could go on through the program, but time is running out, and you have heard most of what I was going to talk about.

So perhaps, why do we not just leave it at that, and I will answer any kind of questions that you might have, Senator.

[The prepared statement of Mr. Schaenen follows:]

STATEMENT OF
DAVID SCHAENEN

Representing the

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA

and the

ROCKY MOUNTAIN OIL AND GAS ASSOCIATION

before the

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION

June 30, 1987

Washington, D.C.

Mr. Chairman, Members of the Subcommittee, good morning. I am David Schaenen, an independent from Billings, Montana. I am representing today the Rocky Mountain Oil and Gas Association (RMOGA), as well as the Independent Petroleum Association of America (IPAA). I am pleased to testify on the pending legislation designed to modify the manner in which oil and gas is leased from public lands.

The Independent Petroleum Association of America represents the estimated 12,000 independent oil and gas producers who account for 90 percent of the wildcat drilling in the United States and 85 percent of all drilling, which results in a majority of the significant oil and natural gas discoveries. Independents generally have only one profit center -- the sale of oil and natural gas at the wellhead -- and one place for reinvestment of capital, exploration and development of new reserves. They do not refine, transport or market oil and natural gas as a principal business.

RMOGA is a trade association whose members account for more than 90 percent of the oil and natural gas exploration and production in the Rocky Mountain states. Comprised of large and small companies, independents and individuals, RMOGA's members are involved in every phase of oil and natural gas exploration, production and transportation in the eight-state region it serves. Since such a large portion of the land in these Rocky Mountain states is federal land, RMOGA's members are extremely concerned about any changes to the Mineral Leasing Act which might affect federal oil and gas leasing.

As a former president of RMOGA and as former chairman of the Public Lands Committees and present member of the Executive Committees of both associations, I have spent a great deal of time on this particular issue, and over the years have watched the debate evolve. In fact, as a landman who has been involved in leasing federal lands since 1952, I have had a great deal of experience with both the practical and the political side of this debate. Since the early 1960s, the issue of competitive versus noncompetitive leasing has been examined and reexamined by the Congress on a number of occasions. It has also been the subject of numerous GAO reports.

The State of the Industry

Before I discuss our specific reaction to the bills pending before this Subcommittee, let me comment on the current state of the petroleum industry.

Unstable world oil prices have devastated the domestic petroleum industry. In the frontier areas we have witnessed a virtual halt to exploration. Rotary drilling rigs working in the nation during May, 1987, averaged 763. This amounts to only 40 percent of the 1,865 rigs that were operating two years ago. Even worse, the current number of rotary rigs represents just 17 percent of the 4,521 rigs active during the peak of December, 1981.

In the Rocky Mountain states, where the federal government owns a majority of the land, the number of rigs operating during May of this year fell to less than one third of the level two years earlier. Compared to May, 1985, when 276 rigs were working in the Rocky Mountain region, today there are 86. Incidentally, in Montana, only five rigs were working last month.

If this doesn't cause some concern, let me explain the relationship between exploration, production, and domestic petroleum reserves. U.S. proved reserves of crude oil have declined by nearly 30 percent since 1970. Discoveries have lagged far behind production in many of those years. Just to maintain current levels of reserves and domestic production, the U.S. needs to find the equivalent of about nine million barrels of oil and 50 billion cubic feet of natural gas every day. We need to find 180 percent of today's proved reserves by the year 2000. But it is becoming increasingly difficult to find that much oil and natural gas. Drilling activity in 1986, as measured by the number of total well completions, dropped by an estimated 56 percent from the peak 1981 level of 86,234.

Given current and projected estimates of U.S. consumption and production of petroleum, it is important that energy policymakers formulate programs that ensure that the nation makes efficient use of its resource base to minimize its vulnerability to future energy supply disruptions.

All of these hard facts point to the need to provide some encouragement to the petroleum industry to continue its search for oil and gas. I hope this explains why the petroleum industry is so concerned about changes -- and new deterrents -- to oil and natural gas leasing on public lands.

Industry Concerns

As the members of this subcommittee are aware, the associations I represent have been strong advocates for the continuation of the traditional leasing system that contained what we felt was a healthy mix of competitive and non-competitive leasing. As recently as a year ago we testified that the present system was indeed a good one. We said that some administrative adjustments could overcome criticisms of the program, and that proper management would ensure a fair and efficient leasing system. At that time we reiterated our long-held position that we favored a continuation of the present program and opposed all legislative efforts to modify the leasing arrangement.

The policy of both associations remains unchanged. However, I would be remiss if I did not tell you that there is widespread frustration in the oil patch with the BLM's administration of the current program. The result of this frustration is that many of our members have come to widely varying conclusions as to what solutions are needed to restore the leasing system to the previous level of efficiency and fairness.

There is a feeling on the part of a large number of our members that the BLM is intentionally drawing Known Geologic Structures to encompass unjustifiably large areas, therby backing us into a defacto all-competitive system. Despite our objections, the practice of drawing huge KGSs with little or no scientific basis has continued. Quite predictably, there are numerous opinions as to how to correct administrative deficiencies in the present system.

Many of our members continue to hope that the BLM will adopt the changes we have urged, which include adopting the recommendations of the recent study by the National Academy of Sciences on KGS determinations, which I will address later. Most people agree that the onshore system, properly managed, has worked well for many years. Others feel that some new direction is needed and the solution lies in the adoption of a system similar to the one presented in S.66, Senator Bumpers' bill. Still others feel that S.1388, presented by Senator Melcher, is the better approach.

The dilemma of this situation is not unusual for any association that represents a large number of people with widely varying interests and perspectives. Unfortunately, it makes a difficult job for this committee -- which we believe is striving for an effective leasing system containing the element of fairness.

The problem for us, and in turn, the problem for you in Congress, is that nearly every company or individual can come up with a way to build the proverbial better mousetrap, whether legislatively or administratively. Then the question becomes, "which mousetrap do we choose?"

I don't mean to imply that there are no points of agreement on any of the various legislative proposals to revamp the leasing system, assuming that one concludes that a legislative change to the Mineral Leasing Act should be made. In fact, there is some agreement.

For example, there is near unanimity on the feature of oral bidding. This is viewed as a positive element. We hope this is acknowledgment of limited financial resources. Again, the ultimate goal of any leasing program should be the generation of revenues through royalties rather than the front-end payments. We believe this same philosophy is demonstrated in both pieces of legislation by the setting of fixed rental and royalty rates. Implicit in my discussion of the state of the industry earlier in my testimony is the fact that a very hard look has to be taken by each and every company -- large or small -- as to the economics of any drilling program. In the case of the independents and smaller companies, outside investment dollars must be found before any drilling program can proceed. Every element of the financial picture of exploration and production is weighed carefully to determine the economic break-even point. That break-even point arrives very quickly in this period of relatively low oil and natural gas prices. Simply stated, higher dollar amounts in any segment of the exploration or production stages, be it through the bidding process, rentals, or royalties, would doom many drilling programs.

To an extent, the federal government is an investor in each of these drilling programs. Therefore, it make no economic sense for the government to set unrealistically high royalties or rents. No royalties will be generated if there is no production; no rentals will be received if lands are not leased. Both S.66 and S.1388 recognize these economic facts.

Issue of Environmental Language

We commend the authors of these bills for their recognition that the numerous and exhaustive environmental requirements provided by the National Environmental Policy Act (NEPA) and the host of other environmental statutes are more than sufficient to deal with all phases of energy exploration and development.

We are pleased that the bills under discussion this morning do not add new, unnecessary environmental requirements. The notion that greater environmental review is needed for oil and natural gas leasing or permitting is totally without merit.

Despite claims of the environmental community, the phases of environmental review associated with oil and natural gas exploration and production are very substantive, replete with opportunities for public participation, and extremely thorough with regard to environmental protection.

The three steps to permitting oil and natural gas activity -- the land management planning process (in which oil and natural gas leasing is first considered), the leasing process itself, and the permitting process -- are detailed in the attached flow charts. A review of these procedures will reveal two fundamental facts: 1) that the oil and gas leasing and permitting processes require elaborate, detailed environmental analyses which are designed to provide the necessary protection to environmental resources; and, 2) that the NEPA compliance and public participation are integral parts of each procedure.

Existing land management planning processes utilized by both the Forest Service and BLM provide for structural analyses of various land uses with numerous opportunities for public input. This input is utilized by the agencies to determine which lands are to be made available for leasing and under what conditions. In areas of particular sensitivity, the decision to lease often is subjected to numerous environmental analyses and countless public hearings and meetings to solicit public comments. Current statutes and regulations provide ample authority and discretion for the Secretary of the Interior to refuse to lease areas if leasing is not in the public interest.

We believe the evidence supports the fact that no new environmental language is needed. A close look at existing environmental statutes and requirements will reveal that the framework for proper, thorough environmental analysis exists under current law. There always will be criticism of ultimate decisions regarding land use; however, these can be resolved. The decision-making authority, however, lies appropriately with the land management agencies. Some of the critics of this process claim that more public participation and closer analysis is needed, and that statutes should be changed to provide this additional layer of review. We must assume the objective of the advocates of these new procedures is a total halt to the process of mineral exploration and development.

The nation needs a leasing system and a planning program that will work. As you can see in the charts, the existing legal scheme operates to protect the environment and yet fulfill the public interest by discovering sources of oil and natural gas on federal lands. Congress repeatedly has found that oil and natural gas are essential to national security. As we saw in 1973, the current level of supply could change quickly, and people could soon be waiting in line for gasoline and concerned about the availability of heating oil. By ensuring that it is economically feasible to explore for oil and natural gas on federal lands, we also ensure that the important discoveries of the future will be made. Despite criticisms from both industry and environmentalists, Congress' original objective that environmental protection be a major part of the decision-making process for public lands is being fulfilled.

Pending Legislation

There is an element in both pieces of legislation that we find troublesome. That is the section dealing with the assignment of leases. It is our understanding that the Department of Interior believes that such a section would be helpful in dealing with fraud in general and the 40-acre merchants in particular. Neither IPAA nor RMOGA represents the 40-acre merchants. In fact, we have been aggressive over the years in encouraging the Department to take various corrective measures when there was the appearance of fraud in the leasing program. One of the recommendations that we pushed for years and which was finally accepted by the Department was the inclusion of the first year's rental along with the filing fee. In all candor I must tell you that the decision on the part of the Department to require such a payment was not met with universal enthusiasm among our members.

As I am sure you gathered from my earlier comments there is a range of opinion on the question of how to approach the mechanical portion of the leasing mix. Again, there are many who believe the present system should be preserved. Among those who want to see a change there are at least two schools of thought concerning one of the central differences between these two bills; that is that some favor a minimum bid at the level (or even higher) of the one in S.66, therby preserving the SIMO program. Others would rather see the approach in S.1388 which provides for essentially no minimum bid.

Those favoring a high minimum bid are primarily independents whose livelihood depends on the participation in the simultaneous program. For many, the ability to participate in this program -- even if they don't win and must secure leases from the secondary market -- ensures a greater possibility of obtaining desired leases. Independents have the flexibility to make creative agreements to drill a well within a specified time frame; this is one of the advantages utilized by independents to successfully negotiate with lease winners. Moreover, many independents believe that a SIMO system is important because in a competitive system smaller operators would not be able to compete with companies with unlimited financial resources for a particular tract of mutual interest. In addition, some believe keeping the minimum bid high will discourage the casual speculator from buying up acreage at an inexpensive price.

The feeling among others is that a low minimum bid would provide equal access to all bidders in a competitive system, and they would not run the risk of paying too high a price for acreage at $20 per acre. For example, at $20 per acre, some believe there would be a tendency to bid that amount to definitely obtain the lease, regardless of its value. This price may well eliminate many individuals or companies from participating in the competitive program.

No matter what course of action chosen by the Congress, some people will suffer financially. Those who favor avoiding all legislation could well argue that the question of economic harm could best be avoided by forcing the BLM to adopt the recommendations of KGS determinations proposed by the National Academy of Sciences, and making other administrative changes, thereby maintaining the present system as it could and should be administered.

The NAS made the following five recommendations:

1. Utilize more fully the discretionary powers of the Secretary in making KGS determinations.
2. Revise the definition of Known Geologic Structures to clarify it and to provide sufficient discretion, preserving the ability to make use of professional judgment and expertise in an analytical and non-arbitrary fashion.
3. Strengthen information requirements and standards to more effectively use relevant, available data.
4. Review KGS staffing requirements and staff development opportunities to correct existing inadequacies.
5. Establish stronger KGS review procedures by improving staffing expertise and maintaining regional consistency.

We would also add that some mechanism should be provided for deleting lands from KGS determinations once they are found to be outside the area of presumed production.

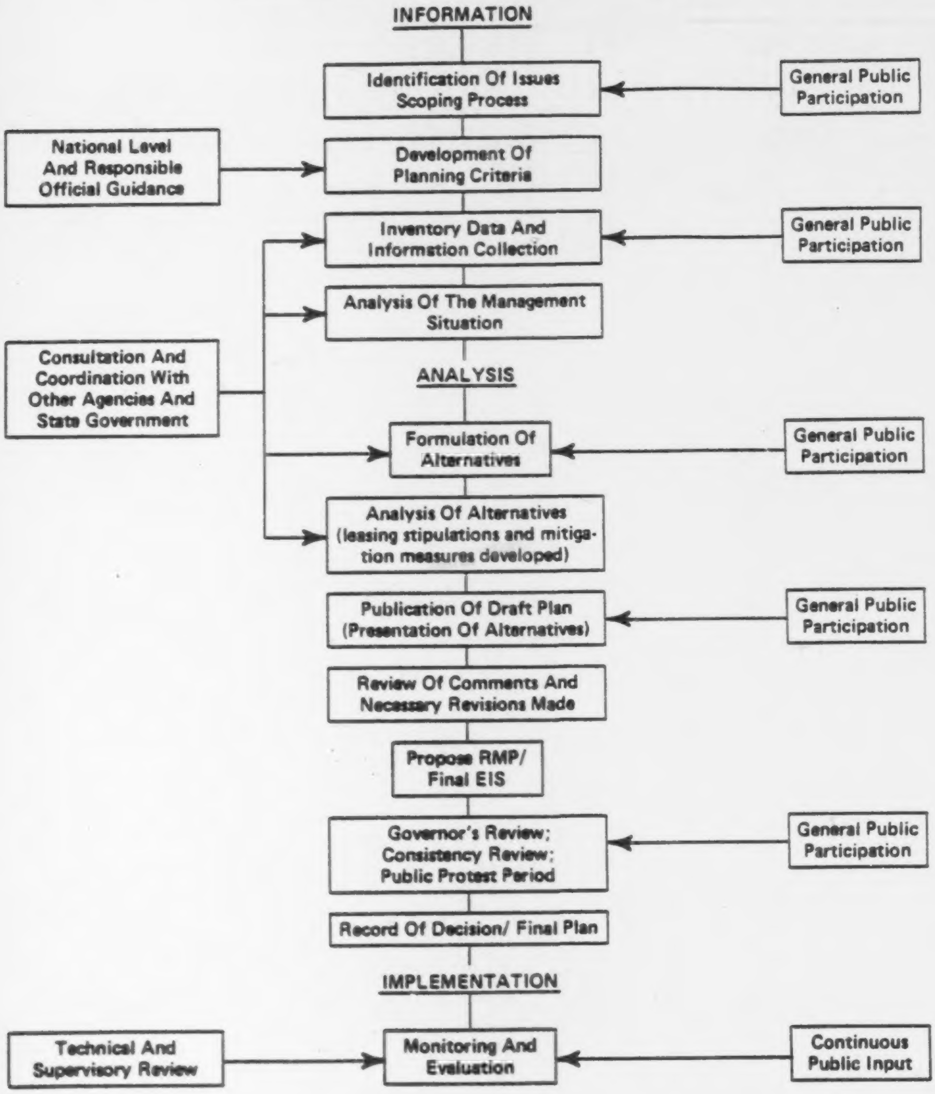
Conclusion

In the final analysis, however, I must reiterate that despite this diversity of opinion on the mechanical aspects of the legislation, and whether or not legislation should even be considered at all, there is absolute unanimity on the issues of rentals, royalties and the adequacy of current environmental requirements.

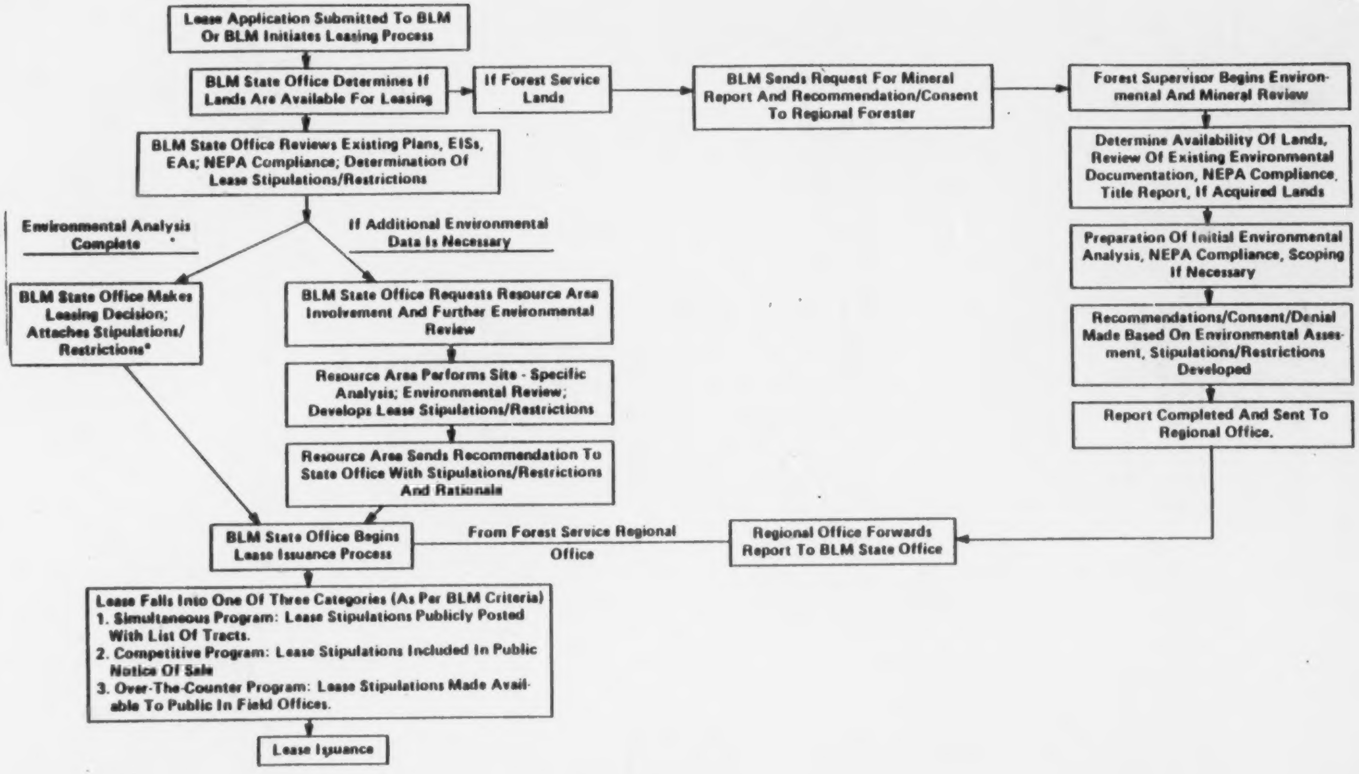
We believe, however, that a great deal can be done administratively to correct current deficiencies in the program, if the BLM is willing to do so. Oral bidding can be established by regulation, and KGS determinations can be contracted by administrative rule. Similarly, relief in rentals and royalties can also be provided. And while some believe a legislative fix to current problems is the best approach, this desire is conditioned on the fact that changes can be limited to the areas needing help. Obtaining relief in the way the program is functioning would not be worth added economic or environmental disincentives to oil and gas exploration and production.

What we hope the members of the subcommittee will keep firmly in mind is that there are others in and outside of Congress whose goals are to discourage, if not altogether put a halt to, leasing on federal lands. There is a real danger in the opening of the Mineral Leasing Act, which goes far beyond the differences of opinion concerning the mechanical aspects of a sound leasing program.

MULTIPLE USE LAND MANAGEMENT PLANNING

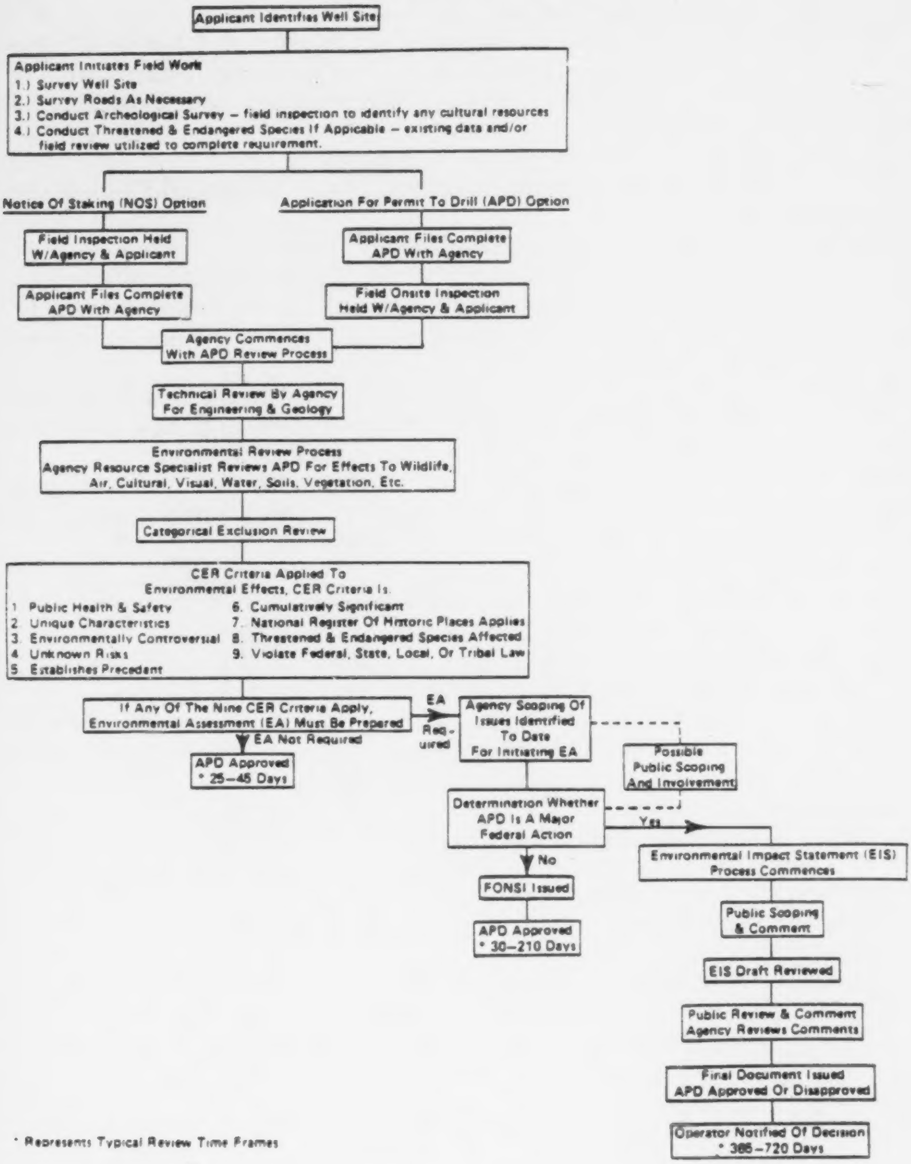

INFORMATION
Identification Of Issues Scoping Process
General Public Participation
National Level And Responsible Official Guidance
Development Of Planning Criteria
Inventory Data And Information Collection
General Public Participation
Analysis Of The Management Situation
Consultation And Coordination With Other Agencies And State Government
ANALYSIS
Formulation Of Alternatives
General Public Participation
Analysis Of Alternatives (leasing stipulations and mitigation measures developed)
Publication Of Draft Plan (Presentation Of Alternatives)
General Public Participation
Review Of Comments And Necessary Revisions Made
Propose RMP/ Final EIS
Governor's Review; Consistency Review; Public Protest Period
General Public Participation
Record Of Decision/ Final Plan
IMPLEMENTATION
Technical And Supervisory Review
Monitoring And Evaluation
Continuous Public Input

OIL & GAS LEASING PROCESS


Lease Application Submitted To BLM Or BLM Initiates Leasing Process
BLM State Office Determines If Lands Are Available For Leasing
If Forest Service Lands
BLM Sends Request For Mineral Report And Recommendation/Consent To Regional Forester
Forest Supervisor Begins Environmental And Mineral Review
Determine Availability Of Lands, Review Of Existing Environmental Documentation, NEPA Compliance, Title Report, If Acquired Lands
Preparation Of Initial Environmental Analysis, NEPA Compliance, Scoping If Necessary
Recommendations/Consent/Denial Made Based On Environmental Assessment, Stipulations/Restrictions Developed
Report Completed And Sent To Regional Office.
Regional Office Forwards Report To BLM State Office
From Forest Service Regional Office
BLM State Office Reviews Existing Plans, EISs, EAs; NEPA Compliance; Determination Of Lease Stipulations/Restrictions
Environmental Analysis Complete *
If Additional Environmental Data Is Necessary
BLM State Office Makes Leasing Decision; Attaches Stipulations/Restrictions*
BLM State Office Requests Resource Area Involvement And Further Environmental Review
Resource Area Performs Site - Specific Analysis; Environmental Review; Develops Lease Stipulations/Restrictions
Resource Area Sends Recommendation To State Office With Stipulations/Restrictions And Rationale
BLM State Office Begins Lease Issuance Process
Lease Falls Into One Of Three Categories (As Per BLM Criteria)
1. Simultaneous Program: Lease Stipulations Publicly Posted With List Of Tracts.
2. Competitive Program: Lease Stipulations Included In Public Notice Of Sale
3. Over-The-Counter Program: Lease Stipulations Made Available To Public In Field Offices.
Lease Issuance

* Lease Stipulations For All Leases Are Always Available In Field Office For Public Review

Application For Permit To Drill (APD) Process


Applicant Identifies Well Site
Applicant Initiates Field Work
1.) Survey Well Site
2.) Survey Roads As Necessary
3.) Conduct Archeological Survey – field inspection to identify any cultural resources
4.) Conduct Threatened & Endangered Species If Appicable – existing data and/or field review utilized to complete requirement.
Notice Of Staking (NOS) Option
Application For Permit To Drill (APD) Option
Field Inspection Held W/Agency & Applicant
Applicant Files Complete APD With Agency
Applicant Files Complete APD With Agency
Field Onsite Inspection Held W/Agency & Applicant
Agency Commences With APD Review Process
Technical Review By Agency For Engineering & Geology
Environmental Review Process
Agency Resource Specialist Reviews APD For Effects To Wildlife, Air, Cultural, Visual, Water, Soils, Vegetation, Etc.
Categorical Exclusion Review
CER Criteria Applied To Environmental Effects, CER Criteria Is.
1. Public Health & Safety
2. Unique Characteristics
3. Environmentally Controversial
4. Unknown Risks
5. Establishes Precedant
6. Cumulatively Significant
7. National Register Of Historic Places Applies
8. Threatened & Endangered Species Affected
9. Violate Federal, State, Local, Or Tribal Law
If Any Of The Nine CER Criteria Apply, Environmental Assessment (EA) Must Be Prepared
EA Required
EA Not Required
APD Approved
* 25–45 Days
Agency Scoping Of Issues Identified To Date For Initiating EA
Possible Public Scoping And Involvement
Determination Whether APD Is A Major Federal Action
Yes
No
FONSI Issued
APD Approved
* 30–210 Days
Environmental Impact Statement (EIS) Process Commences
Public Scoping & Comment
EIS Draft Reviewed
Public Review & Comment
Agency Reviews Comments
Final Document Issued
APD Approved Or Disapproved
Operator Notified Of Decision
* 365–720 Days

* Represents Typical Review Time Frames

Senator **Melcher**. As I understand it, you get rid of the KGS and the competitive oral bidding. Do you believe a 10-year primary lease is the right primary lease?

Mr. **Schaenen**. No. I feel 10 years is the proper term. I have been involved in putting drilling deals together, and I can think of several that went past the five-year term, that took longer than five years to put together.

Senator **Melcher**. Do you want the lottery yet?

Mr. **Schaenen**. My personal opinion is that we should leave the system the way it is.

Senator **Melcher**. You want the lottery then?

Mr. **Schaenen**. Yes, sir. I think that if the BLM made a concerted effort to implement the definition of a KGS as promulgated by the National Academy of Science, that perhaps they could in fact do that.

We understand now that the directives, whether from Washington or from the field offices, are such that they are now defining KGSs over a much larger area than they necessarily have to.

They are taking any well that might have a show of oil and putting that into a KGS. And I do not think that is a valid imposition on their part. I think that there is sufficient——

Senator **Melcher**. What does that have to do with the lottery?

Mr. **Schaenen**. Well, I am just talking about the KGS now.

Senator **Melcher**. Oh. But you do want the lottery?

Mr. **Schaenen**. Yes. I am aware, Senator, of the filing services and the alleged abuses which have occurred over the years.

However, I think that the imposition of the $1 per acre advance rental has had a great deal to do with the lessening, obviously, not only of the abuses, if there are any now, but also of the number of applications being filed.

Senator **Melcher**. All right. Thank you very much, Dave. Our last witness is Karl Gawell, legislative representative from the National Wildlife Federation.

Your entire statement will be made part of the record, Karl.

STATEMENT OF KARL GAWELL, LEGISLATIVE REPRESENTATIVE, PUBLIC LANDS AND ENERGY DIVISION, NATIONAL WILDLIFE FEDERATION, ACCOMPANIED BY KATE ZIMMERMAN, COUNSEL, PUBLIC LANDS PROGRAM

Mr. **Gawell**. Thank you, Mr. Chairman. If the Chairman does not object, I would like to be accompanied by Kate Zimmerman, who is the counsel for the public lands program, basically for purposes of questions.

Senator **Melcher**. All right. Fine.

Mr. **Gawell**. Thank you, Mr. Chairman, for this opportunity to speak to the subcommittee today about our concerns about the onshore oil and gas leasing program.

After hearing the previous discussions this morning, it is apparent to me that I should have brought my black hat, and that I am the only witness supporting any change in the program.

I think that everybody else here, the Interior Department, the oil industry, the independents, all said they like things the way they are now.

Well, the National Wildlife Federation does not like things the way they are now, and quite honestly I think that both Senator Melcher's bill and Senator Bumpers' bill moves in the right direction. They are moves which recognize that there are serious problems with the on-shore oil and gas leasing program.

From just a strictly fiscal perspective, staying out of the motherhood of the environment here, when you look at how the lotteries operated, the Amos Draw situation, you look at how the competitive systems operated, there have been serious problems.

The Interior Department has recognized them. They have stopped the lottery program on several occasions, out of basically public embarrassment. I am personally surprised that after everything that has happened with the leasing system, and the embarrassment they faced over the last few years, that they still support basically business as usual.

I think that good public policy dictates that the subcommittee consider measures like you are today to make some improvements in this program.

I was rather amused, however, at what appeared to be the debate between the sponsors of the two bills, because, quite frankly, I think that both bills have their good points and their bad points.

I think what the Wildlife Federation has in the past supported is something closest to half of each, which looks a lot like Senator Bumpers' original bill from last Congress. It is one which does not leave out half the lands for over-the-counter leasing, which at the same time does not set a $20 minimum.

I have real factual problems with these, and I am not sure the facts are being brought out here by the Interior Department, who is supposed to be in charge of these things.

I would submit for the record a news release I just received the other day, June 20th, 1987, the Bureau of Land Management competitively leased lands in several states, these are lands which are within known geologic structures of producing oil and gas fields.

These are not wildcat wells. Now, there are leases in here that went for, let us take a look, $5.28 an acre. Under Senator Bumpers' bill we would reject that bid. We would say, we do not want your five and a quarter. We are going to give it to you for $1.

There are also 70 lease tracts in known geologic structures, in producing oil fields, that received no bids. Under either bill this morning that you are looking at, what would happen to those tracts?

Would we turn around and put them in a lottery for $1? I do not yet understand what the problem is with the independence, in terms of lack of availability of land. As several times have been pointed out today, most states, in fact I believe all states, have a competitive leasing program.

A straight competitive leasing program, with $1 an acre minimum, run on a regular basis, should be able to meet virtually everyone's needs. I have not seen factual arguments that say, that is not the way to go.

In fact, when I look at how the bidding goes in lands like this where land does go for $5 an acre, I do not understand a $20 minimum, and I do not understand the need to have a lottery system at all, with the type of fraud we have had.

And I do not understand that because we do not get bids today for a known producing field, why we should turn around tomorrow and sell it for $1 instead of holding on to it for six months until the next regular sale, and then offer it competitively.

I think that the arguments for an all-competitive system are strong. I think it can be done in a manner which meets the needs of the independents, meets the needs of people who need to explore, and meets the needs of the majors who in fact are the people who develop most of the producing fields.

And I challenge the industry to present factual arguments to the contrary, instead of, we do not like change, we are not sure how this will work, gee, we think that somebody might come and competitively grab a hunk of a field we would like to produce.

I hear a lot of things going on here. I hear they like the $1 an acre, it is a good price. And they do not like to compete with each other. But from a public perspective, I do not think we are getting a fair value.

And for people whose organization, people who are interested in recreation, I mean we are paying $3 to enter national parks. I went out to Assateague Island the other day, paid $3 to enter. I could have gotten an oil lease for less, for the land I use.

We are all beginning to pay for the public property a fair rate, and I think that an all-competitive leasing system, and our membership strongly supports an all-competitive leasing system.

I do not believe, however, we do not believe as an organization, that the issues before the subcommittee today can or should be divorced from other issues with the oil and gas program.

I am not sure where you stop. Do you just say, gee, is it all-competitive versus non-competitive? Or should we talk about fraud and abuse in the filing services, that basically go off and take savings out of grandparents? Or abuse down in Texas or Florida or other areas. They have had tremendous problems in the past with filing services.

Or do we take it the next step and do we say, gee, you know that the problem here is? The problem actually is that we do not have bonding. Is bonding an environmental problem? Or is it a leasing problem?

Do we talk about royalties, is that an environmental problem? Or is that a leasing problem? Do we talk about whether the Forest Service should have basically the right to approve whether its lands are leased or not? Is that an environmental problem? Or is that a leasing problem?

I think that the division between where our concerns lie and where the bills before this committee are is at best a gray area, and in mind it is a continuum of problems that center around the current oil and gas leasing program.

That center around the fact that the Department of the Interior is not complying, not with what we would like the laws to be, but with what the laws are today. That the department is placing at risk what we believe are very important resources to us, while at the same time it is leasing land and not getting a fair return for the public.

Now perhaps it would be easy to think that there is a quick fix. I do not believe that there is. I think we have a program, with the on-shore oil and leasing program, that has serious problems.

And I think that the committee ought to recognize that and address them. I think there are other organizations and interests who would like to give this committee its views and talk about some of the problems they see. And I hope that it gives them that opportunity.

But in any event, I do not believe that what we have heard this morning, leave it alone, everything is fine. It is not fine. The public does not think it is fine. Members of the Wildlife Federation do not think it is fine.

And we do encourage the subcommittee to move ahead and make changes in this program, to bring it in line with the public interest.

[The prepared statement of Mr. Gawell follows:]

Working for the Nature of Tomorrow
NATIONAL WILDLIFE FEDERATION
1412 Sixteenth Street, N.W., Washington, D.C. 20036-2266 (202) 797-6800

Statement of
Karl Gawell
Legislative Representative
Public Lands and Energy Division
before the
Subcommittee on Mineral Resources Development
and Production
Committee on Energy and Natural Resources
regarding
S. 1388 and S. 66
June 30, 1987

Mr. Chairman, Members of the Subcommittee, on behalf of the National Wildlife Federation I wish to express our appreciation for this opportunity to present testimony on legislation to reform Federal on-shore oil and gas leasing procedures.

The National Wildlife Federation (NWF) is the nation's largest not-for-profit, conservation-education organization with over 4.6 million members and supporters. NWF has a longstanding interest in the management of public lands and resources, including the Federal on-shore oil and gas leasing program. In fact, one of the earliest conservation issues which the the National Wildlife Federation found itself addressing involved oil and gas leasing on National Wildlife Refuge lands. More recently, in fact this past March, NWF adopted a resolution sponsored by the Wyoming Wildlife

Federation which calls for substantial reform of the on-shore oil and gas leasing program. This resolution is attached to my testimony.

The legislative proposals before the Subcommittee are intended to resolve significant problems of the on-shore oil and gas leasing program involving millions of acres of the public lands, mostly in the West. These lands, which hold most of the undiscovered oil and gas resources of the United States, also are habitats for significant populations of wildlife. Wildlife and oil and gas development are not always in conflict, but lands which hold potential oil and gas resources often include critical habitat for wildlife species which do not easily tolerate the intrusions of people. While S. 1388 and S. 66 provide for revisions to the bidding procedures of the Federal on-shore program, they do not provide for needed improvements in the procedures used to protect fish, wildlife and other environmental values.

The conflict between oil and gas development and wildlife has been limited in recent years, in large part due to low world oil prices. However, as Chairman Melcher notes in his introductory remarks for S. 1388, "oil prices have started to climb again, and Federal oil and gas leasing should again become active." Following on the heels of this renewed interest in oil and gas leasing will be the bulldozers, helicopters, roads, and drilling rigs of new oil and gas wells. If we return to the exploration trends which were evident before the oil price collapse, public lands holding major wildlife and other natural resource values will be the destination for this well-drilling revival, particularly the Northern U.S. Rocky Mountains.

The National Wildlife Federation is not alone in its concerns about the on-shore oil and gas leasing program. Other local and national organizations, from the Badger-Two Medicine Alliance of Montana to the Sierra Club, also have expressed concerns. We cannot pretend to represent the views of these other organizations and would hope that this Subcommittee will provide them an opportunity to express fully their concerns before it proceeds further with any legislation.

Because of the short time we have had to prepare our remarks today, we will attempt only to provide the Subcommittee an outline of the views of the Federation, and present materials which briefly describe our major concerns.

Areas of Concern

The Department of the Interior's on-shore oil and gas leasing program has placed at risk needlessly significant wildlife and other natural resources on millions of acres of the public lands. It has done this by sidestepping Federal laws essential for wildlife and environmental protection including the Endangered Species Act, the National Environmental Policy Act and the Federal Land Policy and Management Act.

The testimony of the National Wildlife Federation presented to the House Committee on Interior and Insular Affairs on February 4, 1986, enumerates these problems. That statement is attached.

The Department continues to fail to meet its obligations under these laws. Just a few days ago, NWF submitted its comments on the Bureau of Land Management's (BLM) draft Resource Management Plan for the Pinedale Resource Area of Wyoming. Those comments also are attached. Despite the fact that oil and gas development already is having significant adverse impacts upon wildlife in the Pinedale area, the draft land-use plan and environmental impact statement propose to lease the last few acres in the resource area not already under lease -- land designated as "areas of critical environmental concern." This zeal to lease every acre of federal land regardless of the impacts of development is sadly typical of BLM's planning and decision making.

The reluctance of the Department of the Interior to comply with its legal obligations has led the National Wildlife Federation to support comprehensive legislation to reform the on-shore oil and gas leasing program. We believe legislation addressing problems, including those which S. 66 and S. 1388 seek to resolve such as competitive bidding for Federal leases, is needed urgently. Any serious legislation to reform the on-shore oil and gas leasing program should address the following points.

Competitive Bidding: On-shore oil and gas leases should be sold by competitive bidding to ensure the receipt of fair market value, curb fraud and abuse, and discourage speculation.

Impacts Assessment: The potential impacts from the development of oil and gas leases should be assessed before leasing consistent with the National Environmental Policy Act and the Federal Land Policy and Management Act. Planning decisions should reflect the environmental analysis and guide leasing decisions.

Impacts Mitigation: The impacts of oil and gas development upon wildlife and the environment should be avoided or mitigated, and all disturbed land should be reclaimed. Bonds should be required to insure compliance with mitigation and reclamation requirements.

Mitigation Funding: Not all of the impacts attributable to oil and gas development can be mitigated on individual lease tracts, and cumulative impacts may be difficult to identify with particular operations. Revenues from oil and gas production should be used to establish a fund which would be used to enhance and mitigate adverse impacts to wildlife and natural resources in areas facing significant development.

Unsuitable Lands: The surface management agencies should be authorized to designate areas unsuitable for oil and gas development. Wilderness study areas, campgrounds and recreation areas, crucial wildlife habitat, and other lands with significant natural resources which are incompatible with oil and gas development should be designated unsuitable.

Lease Stipulations: Stipulations prohibiting surface occupancy should not be used unless the lands involved are fully accessible by directional drilling. Further, public notice and comment should be required as a part of the formulation of lease stipulations, and as a part of the process associated with any decision to waive or change lease stipulations.

The Central Question

We do not believe that the measures which this Subcommittee is considering can be separated from the other areas of concern outlined above. A key question which must be addressed in reforming the leasing system is the kind of lease we are authorizing the Secretary of the Interior to issue. What rights does it convey? The answer to this question not only affects the fair market value of the lease but is fundamental to our environmental concerns.

The National Wildlife Federation approaches the decision to issue an oil and gas lease with the presumption that it is an irretrievable commitment of public resources. Therefore, the detailed environmental assessment and planning discussed earlier is essential prior to the leasing decision in order to ensure that the public's interest in its natural resources in fully protected. Legislation has been introduced in the House of Representatives by Representative George Miller, H.R. 933, which would explicitly require adequate pre-leasing review. NWF supports H.R. 933, and urges this Subcommittee to consider adding its provisions for protection of the environment, planning, and public participation to any legislation it reports.

If the Department of the Interior is not directed to take such actions by Congress, it will continue to conduct the Federal leasing programs in a manner which presumes that all environmental problems can be addressed later. Its use of lease stipulations, which defer virtually all critical environmental questions until after leases have been issued, has been defended by pronouncements that the Secretary has the authority to condition action on the lease in the future to any extent necessary to prevent environmental harm.

We believe that this approach -- lease now, plan later -- courts confrontation, litigation, and unnecessary expense for both the public and the industry.[1]

Should this Subcommittee believe it essential to take action on legislation before addressing the ancillary concerns raised by the Federation, the Sierra Club and others, we urge that it examine the central issue of whether the leases to be issued by the Secretary of the Interior are or are not irretrievable commitments to future oil and gas development on public lands. If the Subcommittee does not accept the legislative approach which we have outlined earlier, one based on pre-lease planning and environmental analysis, then we urge it to add explicit provisions to the law clarifying the Secretarial authority presumed by the Department's current leasing approach, i.e. the authority to impose conditions later to address environmental problems as they arise. This is essential to provide some measure of protection to the natural resources on lands already leased and those which will be leased in the immediate future, and public participation at critical decision points.

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[1] However, millions of acres of the public lands have been leased already based upon the presumption that the Secretary has authority adequate to enforce these kinds of stipulations in the leasing contracts. Further, the most critical resources are "protected" by what are, in our view, the most questionable stipulations.

We would be pleased to work with the Subcommittee to draft such amendments. We suggest that they:

1) authorize the Secretary of the Interior, at any time, to condition and/or restrict the rights of any lease holder to develop or otherwise enjoy a lease;
2) direct the Secretary to include in all leases, permits, and subsequent authorizations such stipulations, including no surface occupancy stipulations, necessary to protect the environment or meet other statutory obligations;
3) direct the Secretary of the Interior to enforce lease stipulations, and authorize the

Secretary to establish, by regulation, fines and other penalties necessary to ensure compliance; and

4) require the Secretary to solicit public comment upon lease stipulations intended to protect significant lands or natural resources, and provide for public notice and comment before waiving or relaxing stipulations contained in any lease.

Conclusion

We appreciate the opportunity to present testimony to the Subcommittee regarding reform of the Federal on-shore oil and gas leasing program. We believe that action to reform on-shore oil and gas leasing is urgently needed, and hope to work with this Subcommittee in its deliberations.

Thank you.

Resolution No. 6

REFORM OF ON-SHORE OIL AND GAS LEASING

WHEREAS, the leasing of federal oil and gas rights through the lottery and the over-the-counter leasing systems have contributed to fraud and abuse and deprived the public of fair market value for its resources; and

WHEREAS, the inability of the U.S. Department of the Interior to determine "known geologic structures" has resulted in only a small fraction of valuable oil and gas lands being leased competitively; and

WHEREAS, the speculation in oil and gas leases has been a primary cause of the overleasing of federal lands, far in excess of needs for exploration and development; and

WHEREAS, the widespread leasing of federal lands has made planning for, and management of, the impacts of oil and gas development upon wildlife and the environment extremely difficult; and

WHEREAS, the cumulative impacts from the development of oil and gas fields pose significant threats to the viability of big game populations, the recovery of threatened and endangered species, and other wildlife values of the public lands; and

WHEREAS, on-shore oil and gas leases are issued for lands with significant natural resources despite the fact that the land management agency has concluded that development and production of the oil and gas is incompatible with the continued viability of such natural resources;

NOW, THEREFORE, BE IT RESOLVED that the National Wildlife Federation in annual meeting assembled March 19-22, 1987, in Quebec City, Quebec, Canada, hereby declares that there is an urgent need for reform of the Federal Government's on-shore oil and gas leasing system; and

BE IT FURTHER RESOLVED that the National Wildlife Federation believes that the following principles should be incorporated into any reform and revision of the laws and policies relating to the leasing of public land oil and gas resources:

1. On-shore oil and gas leases should be issued competitively to ensure the receipt of fair market value, to curb fraud and abuse, and to discourage excessive speculation;

2. On-shore oil and gas leasing should be conducted after the federal land management agencies have examined, consistent with the National Environmental Policy Act and other applicable laws, the potential adverse impacts from field development on wildlife and the environment, including cumulative impacts, and have reasonably determined how to prevent and mitigate such impacts;

3. Increased revenues from obtaining fair market value for federal leases should be used to enhance wildlife and recreational resources, with a priority placed upon those facing the most significant impacts from development; and

4. On-shore oil and gas leases should not be issued for wilderness study areas, campgrounds and recreation areas, crucial wildlife habitat, and other lands with significant natural resources when this non-commodity use is incompatible with eventual oil and gas development and production, unless off-site directional drilling is possible; and

BE IT FURTHER RESOLVED that any reform of federal on-shore oil and gas leasing laws and policies should require implementation expeditiously and in a manner which balances the Nation's need for domestic energy supplies with the need to protect the wildlife, recreational and natural resource values of the public lands.

KG— DAVE A. —

FYI CJG

NEWS MONTANA/DAKOTAS **BLM**

U.S. Department of the Interior   Bureau of Land Management   P.O. Box 36800   Billings, Montana 59107

Date: June 20, 1987

Contact: Michelle Ravnikar, (406) 657-6561, office
(406) 652-4091, home

BILLINGS--Apparent high bids totaling nearly $413,500 were received for leasing rights on 140 parcels offered by the Bureau of Land Management at its competitive oil and gas lease sale June 17.

The highest bid received was $34,016 for 320 acres in McKenzie County, N. D. The bid was submitted by Enron Oil and Gas Company of Houston.

A total of 27,707.28 acres was offered for lease. Seventy parcels did not receive any bids.

The parcels receiving bids include 20 in Montana, 30 in North Dakota and 20 in South Dakota. All parcels are within known geological structures of producing oil and gas fields.

On acceptance of the bids, leases will be awarded for a 5-year term, or longer if there is oil or gas production. In addition to bid payments, lessees must pay an annual rental of $2 per acre as well as royalty on any oil or gas that is produced.

Here is a summary of the apparent high bidders:

-MORE-

OIL AND GAS SALE--ADD ONE

Montana--Toole County, 40 acres, $1,040.40, J.C. Klink, Vacaville, Calif,; Toole County, 40 acres, $603.60, Farmer's Union Central Exchange, Inc., Billings; Toole County, 40 acres, $884.40, Roger Pellow, Forest Grove, Ore.; Toole County, 40 acres, $1,122, Kurt Egger and Patricia West, El Dorado Springs, Colo.; Toole County, 80 acres, $2,880.80, Kurt Egger and Patricia West; Liberty County, 480 acres, $8,529.60, Great Northern Drilling Co., Inc., Billings; Hill County, 40 acres, $410.80, W.M. Vaughey, Havre; Stillwater County, 151.28 acres, $2,278.28, Dynamic Plastics, Inc., New Paris, Ohio; Musselshell County, 120 acres, $634.80, John D. Lawrence Jr., Worden; Musselshell County, 400 acres, $4,116, John D. Lawrence Jr.; Musselshell County, 600 acres, $3,774, John D. Lawrence Jr.; Roosevelt County, 40 acres, $6,042.80, Austin E. Hills, San Francisco; Roosevelt County, 21.53 acres, $29,881.65, Tex-Spec Ventures, Juda, Wis.; Fallon County, 200 acres, $2,000, Shell Western E & P, Inc., Houston; Fallon County, 40 acres, $400, Shell Western E & P, Inc.; Fallon County, 120 acres, $1,200, Shell Western E & P, Inc.; Toole County, 25.66 acres, $157.50, Somont Oil Co., Inc., Spring, Texas; Powder River County, 40 acres, $1,100, Duane L. Haley, Denver; Powder River County, 80 acres, $2,200, Duane L. Haley; Powder River County, 40 acres, $2,084.80, J.C. Klink.

North Dakota--Bottineau County, 68.96 acres, $3,517.65, Dynamic Plastics, Inc.; Mountrail County, 160 acres, $1,040, Craig Folson, Dallas; Billings County, 160 acres, $2,240, Craig Folson; Billings County, 40 acres, $210, Edward F. Gray, Woodscross, Utah; Billings County, 320 acres, $2,275.20, Denver G.P, Denver; Billings County, 40 acres, $880, Craig Folson; McKenzie

-MORE-

County, 107.37 acres, $11,413.43, Enron Oil and Gas Co., Houston; McKenzie County, 196.15 acres, $20,850.75, Enron Oil and Gas Co.; McKenzie County, 320 acres, $34,016, Enron Oil and Gas Co.; McKenzie County, 597.48 acres, $21,509.28, Union Oil Company of California, Midland, Texas; Billings County, 30.05 acres, $236.10, Tex-Spec Ventures; Billings County, 27.194 acres, $660, Meridian Oil, Inc., Billings; Billings County, 61.09 acres, $1,403, Meridian Oil, Inc.; Billings County, 42.38 acres, $1,010, Meridian Oil, Inc.; Billings County, 20.69, $1,560, Meridian Oil, Inc.; Billings County, 61.41 acres, $2,330, Meridian Oil, Inc.; Billings County, 17.24 acres, $87.41, Donald C. Slawson, Denver; Billings County, 22.84 acres, $3,116.06, Prairie Petroleum, Denver; Billings County, 26.14 acres, $3,565.50, Prairie Petroleum; Billings County, 9.675 acres, $1,319.96, Prairie Petroleum; McKenzie County, 16.886 acres, $255, Craig Folson; McKenzie County, 18.674 acres, $305, Craig Folson; McKenzie County, 30.873 acres, $510, Craig Folson; Golden Valley County, 38.57 acres, $1,209.17, Maxus Exploration, Co., Amarillo, Texas; Williams County, 9.926 acres, $504.80, Tex-Spec Ventures; Bowman County, 80 acres, $728.80, Denver G.P.; Bowman County, 363.54 acres, $12,723.90, Shell Western E & P; Bowman County, 320 acres, $11,200, Shell Western E & P, Inc.; Bowman County, 320 acres, $11,200, Shell Western E & P, Inc.; Bowman County, 262.04 acres, $9,171.40, Shell Western E & P, Inc.

South Dakota--Harding County, 80 acres, $1,320.80, Koch Exploration Co.; Wichita, Kans.; Harding County, 40 acres, $602.40, Roger Pellow; Fall River County, 157 acres, $5,449.47, Sun Exploration and Production Co., Dallas;

-MORE-

OIL AND GAS SALE -- ADD THREE

Fall River County, 14.40 acres, $499.83, Sun Exploration and Production Co.;
Fall River County, 320 acres, $11,107.20, Sun Exploration and Production Co.;
Fall River County, 560 acres, $19,437.60, Sun Exploration and Production Co.;
Fall River County, 280 acres, $9,718.80, Sun Exploration and Production Co.;
Fall River County, 300 acres, $10,413, Sun Exploration and Production Co.;
Fall River County, 398 acres, $13,814.58, Sun Exploration and Production Co.;
Fall River County, 160 acres, $5,553.60, Sun Exploration and Production Co.;
Fall River County, 400 acres, $20,604, Propel Energy Co., Dallas; Fall River County, 230 acres, $7,983.30, Sun Exploration and Production Co.; Fall River County, 237.83 acres, $8,255.08, Sun Exploration and Production Co.; Fall River County, 112.78 acres, $3,914.60, Sun Exploration and Production Co.; Fall River County, 320 acres, $11,107.20, Sun Exploration and Production Co.; Fall River County, 40 acres, $210.40, Flag-Redfern Oil Co.; Casper, Wyo.; Fall River County, 640 acres, $22,214.40, Sun Exploration and Production Co.; Fall River County, 578.53 acres, $20,080.78, Sun Exploration and Production Co.; Fall River County, 145.98 acres, $5,066.97, Sun Exploration and Production Co.; Fall River County, 107.40 acres, $3,727.86, Sun Exploration and Production Co.

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Senator MELCHER. The things you mentioned in regard to leases on the need to change the policy happen to be the same as my judgment on the question of the lottery.

Perhaps we have come down to pretty much an agreement also. I do not like the lottery. Some people I guess who have used it in their states, like Senator Wallop, seem to think it is all right. But the state did discontinue, it is my understanding. Wyoming did.

Would a state lease the land that it has, pretty much the same way I recommended? Frankly, the way we do it in Montana seems to me to be pretty much, with state land, seems to be pretty much the way I recommended.

The question of whether we get $20 minimum bid, I think you are absolutely right. I think there would be an awful lot of land that would never be put up competitively, and would never get $20.

The idea that somehow leasing land for oil and gas exploration is a big bargain at $20 or $10 is alien to my experience. I do not know where that happens. Maybe it happens somewhere. But it does not happen in our state very often.

There has to be real interest in it. If you have a big state, other western states are fairly large, that have public lands. I do not think any of them are as large as ours, except California and Alaska.

Texas does not count because it hardly has any public lands. So we come in next. There is very little that has any play this time because of the price of oil. And there would be very little of any play, except on somebody's speculation that oil is going to get up around $24, $25 a barrel.

Then people that want to risk some money on that possibility or that likelihood might begin leasing again. So I am with you. I think we ought to revise the system now, and get it in shape.

Where we disagree is that you want to use this as a vehicle to attach amendments that properly belong on the Forest Management Act and in FLPMA.

Now, apparently you have gotten to the point, you and others in the environmental community, have gotten to the point where you scared the daylights out of them. Both of these organizations, as I understand their testimony, are saying, we are half and half.

Half of us think you ought to change and make a policy that works, so there is some leasing. And the other half says we are scared to have you touch it because you are going to put more restrictions on environmental requirements in what you do in the whole process from leasing to putting in the well.

My purpose as a subcommittee chairman will be simply this, if we can move a bill that looks like it will make some good policy for more production in the leasing process, I will move a bill, I will work to move a bill.

And the other part of it is that if it does not do that, then I will work, at least in my judgment it does not do that, I will work to make sure it does. I cannot tolerate attaching amendments to the Mineral Leasing Act that properly belong in the whole planning process on the Forest Management Act and FLPMA.

I will work very diligently to pursue that and maintain that purity. Sometimes, you will note, as you probably have on many occasions, that purists are not always sitting at the seats up here, either in the House or in the Senate.

But on this one I very well understand your concerns. I think it is a possible time that we do address both FLPMA and the Forest Management Act to see what needs to be done in the planning process. But I want to do it on those bills. I do not want to hybridize any worse than it is the Mineral Leasing Act.

Our record will remain open for two weeks for additional written statements to be submitted to the committee for the record of this hearing.

And with that, the subcommittee is adjourned. Thank you all very much.

[Whereupon, at 1:10 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Committee Questions

SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION
HEARING ON S. 1388 and S. 66
June 30, 1987

ADDITIONAL QUESTIONS FROM SENATOR MELCHER
TO THE DEPARTMENT OF THE INTERIOR

1. Q. The Administration's views on S. 66, dated May 14, 1987, state that S. 66 would encourage oil and gas exploration and development on federal lands. Do you believe that S. 1388 would do so as well?

   A. Both S. 66 and S. 1388 should encourage exploration and development. Both bills make land available through competitive and noncompetitive leasing. S. 66 will keep more land under lease and may result in more exploration, development, output and royalty and rental income because while providing sufficient competition to capture valuable tracts it also provides the broadest noncompetitive outlets for speculative new frontier leasing.

Senator Melcher

2. Q. Do you support a ten-year lease term for all federal onshore oil and gas leases?

   A. There are arguments for both 5 and 10 year lease terms. The short term favors circulation of acreage at the expense of less time for development, play building and administrative costs. Longer terms do the reverse. We have generally favored longer terms except where prospects are quite certain.

Senator Melcher

3. Q. What discretion does the Secretary have under existing law to deny the issuance of a lease?

   - o What discretion would the Secretary have to deny the issuance of a lease under S.66?
   - o What discretion would the Secretary have to deny the issuance of a lease under S. 1388?

   A. Under both S. 66 and S. 1388 the Secretary has discretion to not lease. The discretion is generally provided in the Mineral Leasing Act of 1920 and the Federal Land Policy and Management Act. The discretion is limited only by the need to not be capricious. Generally, denial of any leasing issuance that would result in unacceptable environmental impacts or unduly restrict other needed land uses is easily defended.

Senator Melcher

4. Q. Do you view ensuring balanced participation by independent and major oil and gas producers in the federal onshore oil and gas leasing program as a desirable policy objective?

   o If so, why?

   A. We do not see a need for an actual balance but rather feel a significant imbalance to be detrimental. Independents and majors have a mutually interdependent relationship, in that independents are risk takers waiting to explore and develop new prospects while majors have stronger financing and an ability to fully develop whole fields. This relationship works automatically and we would not wish to disturb it by any provision that gives the strengths of either group undue advantage.

Senator Melcher

5. Q. In your testimony you state that instances may arise requiring selection among OTC applicants and that this "will prove to be a great administrative burden".

o Why do you reach this conclusion?

o Is this a greater burden than running the lottery?

A. If several or many parties have interest in a tract despite the fact that they were unwilling to bid at minimum levels for it, it will be necessary to choose by lot among their filings if made simultaneously or nearly so. This is an easy process for a single tract. If there are many tracts the repetition of the simple drawing process becomes burdensome up to the point that there are enough such cases to justify a full-blown lottery system as we now have. Once systematized, the unit costs drop sharply again. We are concerned about prospects for too many such tracts to consider the phenomenon occasional but not enough to justify a cheaply run system.

Senator Melcher

6. Q. Please provide on a state-by-state basis a listing of acreage currently under study for inclusion on a KGS or favorable petroleum geological province (FPGP).

A. The following table lists acreage reported by BLM State Offices as currently under study for possible KGS/FPGP designation, and temporarily being withheld from leasing pending study completion and subsequent classification.

State	Acres under study
Alaska	0*
Arizona	0
California	12,000
Colorado	30,360
Idaho	0
Montana, No./So. Dakota	104,560
Nevada	6,402
New Mexico, Texas , Kansas, Oklahoma	340,683
Oregon, Washington	0
Utah	17,000
Wyoming, Nebraska	116,700
Eastern States	2,099,000
Total:	2,726,705

* No studies are currently underway directed specifically at identifying FPGP lands in Alaska. However, as input to the comprehensive planning process for National Wildlife Refuges in Alaska called for under section 304(g) of ANILCA, and in response to study requirements of sections 1002 and 1008 of that act, the BLM is conducting a systematic assessment of the oil and gas potential of Alaskan refuge lands. While the intent of these studies is not necessarily to identify FPGP areas, it is conceivable that some parts of the refuge system might qualify for FPGP status, and would be so designated.

Senator Melcher

7. Q. Please provide on a state-by-state basis a listing of acreage which currently is under referral to a surface managing agency (other than the BLM) for a recommendation or consent regarding leasing and which has not been made available for leasing.

A. We do not have an acreage history available at this time. However, the following is a history of the approximate number of cases referred to another surface managing agency. The average base size is 1,100 acres. The Bureau estimates that approximately 3.2 million acres have been referred.

Arizona	1
California	360
Colorado	330
BLM Eastern States Office	646
Idaho	127
Montana	321
North Dakota	5
South Dakota	5
Kansas	22
New Mexico	214
Oklahoma	125
Texas	341
Nevada	8
Nebraska	4
Oregon	35
Washington	171
Utah	85
Wyoming	106
Total	2,906

Senator Melcher

8. Q. Please provide on a state-by-state basis a listing of acreage which currently is contained in a KGS or FPGP.

A. This is a listing of the acreage contained in a KGS or FPGP:

State	Total Acres in KGS
Alaska	14,230,00
Arizona	7,677
California	684,086
Colorado	2,112,132
Eastern States	4,079,558
Montana incl. North Dakota	3,207,883
Nevada	21,105
New Mexico incl. TX, KS, OK	12,301,949
Utah	2,489,534
Wyoming	7,175,520
Total	46,309,444

Senator Melcher

9. Q. Please provide on a state-by-state basis a listing of acreage covered by oil and gas lease on January 1, 1987.

A. As of September 30, 1986, there were oil and gas leases on 90 million acres of Federal land. Attached is a table which shows the distribution of that acreage by State.

TABLE 36.—*Competitive oil and gas and geothermal leasing, fiscal year 1986*

Geographic State	Leases in effect as of September 30, 1986[a]		Leases issued during fiscal year		
	Number	Acres	Number	Acres	Accepted bonus bids
Oil and gas					
Public domain					
Alabama	7	402	1	80	$1 650.00
Alaska	[b]41	978,444	....	....	....
Arkansas	47	8,440	7	1,891	118,442.43
California	125	20,217	....	....	....
Colorado	571	149,042	47	9,801	504,992.05
Kansas	92	18,817	4	298	9,858.80
Louisiana	48	4,858	11	422	37,274.74
Michigan	4	232	....	....	....
Mississippi	5	200	1	79	6,336.00
Montana	404	103,780	31	5,255	271,132.00
Nebraska	16	4,280	5	2,583	100,014.00
Nevada	19	2,031	5	720	125,162.80
New Mexico	1,812	386,878	235	41,783	8,714,428.77
North Dakota	61	11,769	11	877	76,869.00
Oklahoma	324	23,000	[c]18	2,051	302,871.51
South Dakota	19	2,797	1	120	9,095.00
Utah	527	197,094	67	29,410	1,422,616.82
Wyoming	2,473	587,586	732	234,673	11,207,805.00
Total	6,595	2,499,867	1,176	330,023	22,908,548.92
Acquired lands					
Alabama	3	605	2	91	510,173.72
Arkansas	142	50,095	17	13,430	1,549,477.97
California	4	306	....	....	....
Colorado	18	3,327	2	194	5,013.78
Illinois	2	90	1	80	4,000.00
Kansas	12	1,834	....	....	....
Kentucky	5	1,177	....	....	....
Louisiana	17	6,998	5	530	98,074.41
Michigan	26	3,566	2	634	102,182.48
Mississippi	92	18,800	10	1,451	358,222.07
Missouri	1	1,329	....	....	....
Montana	13	1,114	1	320	323,770.00
New Mexico	7	281	1	33	16,994.91
North Dakota	56	8,758	12	2,100	299,743.00
Ohio	38	4,741	5	362	7,582.83
Oklahoma	85	20,615	[d]6	967	85,845.40
Pennsylvania	2	477	1	315	40,015.00
Texas	62	12,347	2	211	68,429.50
Utah	2	320	....	....	....
Virginia	4	1,120	....	....	....
Wyoming	51	7,191	20	2,314	269,004.00
Total	640	145,091	87	23,032	3,734,539.07
Public domain and acquired lands					
Alabama	10	1,007	3	171	511,823.72
Alaska	41	978,444	....	....	....
Arkansas	189	58,535	24	15,321	1,667,920.40
California	129	20,523	....	....	....
Colorado	589	152,369	49	9,995	510,005.83
Illinois	2	90	1	80	4,000.00
Kansas	104	20,651	4	298	9,858.80
Kentucky	5	1,177	....	....	....
Louisiana	65	11,856	16	952	135,349.15
Michigan	30	3,798	2	634	102,182.48
Mississippi	97	19,000	11	1,530	364,558.07
Missouri	1	1,329	....	....	....
Montana	417	104,894	32	5,575	594,902.00
Nebraska	16	4,280	5	2,583	100,014.00
Nevada	19	2,031	5	720	125,162.80

TABLE 36.—*Competitive oil and gas and geothermal leasing, fiscal year 1986—concluded*

Geographic State	Leases in effect as of September 30, 1986[a]		Leases issued during fiscal year		
	Number	Acres	Number	Acres	Accepted bonus bids
New Mexico	1,819	387,159	236	41,816	8,731,423.68
North Dakota	117	20,527	23	2,977	376,612.00
Ohio	38	4,741	5	362	7,582.83
Oklahoma	409	43,615	[e]24	3,018	388,716.91
Pennsylvania	2	477	1	315	40,015.00
South Dakota	19	2,797	1	120	9,095.00
Texas	62	12,347	2	211	68,429.50
Utah	529	197,414	67	29,410	1,422,616.82
Virginia	4	1,120	....	....	....
Wyoming	2,524	594,777	752	236,987	11,476,809.00
Total oil and gas	7,235	2,644,958	1,263	353,055	26,643,087.99
Geothermal					
Public domain and acquired lands					
California	142	229,296	2	3,204	....
Idaho	3	4,180	....	....	....
Nevada	56	102,377	11	[illegible]	168,037.32
New Mexico	30	46,718	....	....	....
Oregon	14	27,982	2	[illegible]	....
Utah	19	33,452	....	....	....
Total geothermal	264	444,005	15	31,384	168,037.32
Grand Total	7,499	3,088,963	1,278	384,439	26,812,125.31

[a] Includes leasing actions during the fiscal year as shown in the three right-hand columns of this table.

[b] Includes 40 National Petroleum Reserve—Alaska (NPRA) leases (DOI Appropriations Act, fiscal year 1981) on 978,044 acres.

[c] The 1985 figures for Oklahoma public domain have been revised as follows: 51 leases issued, 7,399 acres leased, and $845,749.41 in accepted bonus bids.

[d] The 1985 figures for Oklahoma acquired lands have been revised as follows: 18 leases issued, 2,057 acres leased, and $237,713.60 in accepted bonus bids.

[e] The 1985 figures for Oklahoma (total lands) have been revised as follows: 69 leases, 9,456 acres leased, and $1,083,463.01 in accepted bonus bids.

Rent: $5.0

TABLE 37.—*Noncompetitive oil and gas and geothermal leasing, fiscal year 1986*

Geographic State	Leases in effect as of September 30, 1986[P]		Leases issued during fiscal year	
	Number	Acres	Number	Acres
Oil and gas				
Over-the-counter filings				
Public domain				
Alabama	52	9,157		
Alaska	6,508	1,700,571	208	187,290
Arizona	450	1,113,687	78	332,502
Arkansas	210	239,654	1	18
California	683	945,464	31	50,943
Colorado	2,115	3,343,917	54	127,985
Florida	18	6,015		
Georgia	1	126		
Idaho	852	1,772,416	6	11,762
Kansas	56	28,583		
Louisiana	39	1,881		
Michigan	25	6,298	11	1,589
Mississippi	84	8,102		
Montana	3,087	4,500,078	120	102,824
Nebraska	46	9,026		
Nevada	2,908	6,105,241	57	140,974
New Mexico	6,409	6,651,077	189	700,582
North Dakota	113	39,630	3	666
Oklahoma	291	59,004	17	12,329
Oregon	716	1,303,135	18	81,244
South Dakota	142	158,904	3	5,935
Utah	3,069	3,907,442	31	37,583
Washington	424	449,258	5	1,612
Wisconsin	5	621	1	80
Wyoming	4,610	4,017,010	85	61,063
Total	32,970	35,376,306	916	1,856,090
Acquired lands				
Alabama	116	107,548	1	58
Arizona	14	32,456	1	400
Arkansas	444	520,365	1	120
California	54	25,009	5	17,790
Colorado	101	41,573	4	8,135
Florida	31	59,924		
Georgia	15	28,140	6	9,026
Idaho	10	13,477		
Illinois	4	280	4	280
Indiana	2	291		
Iowa	7	1,380	1	120
Kansas	43	32,748		
Kentucky	88	46,422	18	12,939
Louisiana	92	25,584	5	1,580
Maryland	4	6,150		
Michigan	333	171,012	86	57,195
Minnesota	56	14,122	49	12,956
Mississippi	235	61,974	8	4,727
Missouri	6	464		
Montana	283	136,745	35	43,936
Nebraska	80	77,495		
Nevada	3	1,912		
New Mexico	95	177,931		
New York	9	10,796		
North Carolina	44	71,228	4	14,983
North Dakota	200	131,240	6	371
Ohio	76	20,487	10	2,050
Oklahoma	382	204,103	32	33,357
Oregon	44	33,622	3	1,245
Pennsylvania	4	929		
South Carolina	11	19,851		
South Dakota	55	49,381	1	1,038
Tennessee	37	63,750		
Texas	180	163,917	17	16,984
Utah	57	33,747	1	355
Virginia	278	387,332	27	26,388
Washington	183	379,224	18	11,600
West Virginia	159	186,110	9	5,604
Wisconsin	39	43,063	33	33,897
Wyoming	113	28,226	2	1,200
Total	3,907	3,418,008	387	319,224
Public domain and acquired lands				
Alabama	168	116,705	1	58
Alaska	6,508	1,700,571	208	187,290
Arizona	464	1,146,143	79	332,902
Arkansas	654	760,019	2	138
California	737	970,473	36	68,733
Colorado	2,216	3,385,490	58	136,120
Florida	49	65,939		
Georgia	16	28,266	6	9,026
Idaho	862	1,785,893	6	11,762
Illinois	4	280	4	280
Indiana	2	291		
Iowa	7	1,380	1	120
Kansas	99	61,331		
Kentucky	88	46,422	18	12,939
Louisiana	131	27,465	5	1,580
Maryland	4	6,150		
Michigan	358	177,310	97	58,784
Minnesota	56	14,122	49	12,956
Mississippi	319	70,076	8	4,727
Missouri	6	464		
Montana	3,370	4,636,823	155	146,760
Nebraska	108	86,521		
Nevada	2,911	6,107,153	57	140,974
New Mexico	6,504	6,829,008	189	700,582
New York	9	10,796		
North Carolina	44	71,228	4	14,983
North Dakota	313	170,870	9	1,037
Ohio	76	20,487	10	2,050
Oklahoma	673	263,107	49	45,686
Oregon	760	1,336,757	21	82,489
Pennsylvania	4	929		
South Carolina	11	19,851		
South Dakota	197	208,285	4	6,973
Tennessee	37	63,750		
Texas	180	163,917	17	16,984
Utah	3,126	3,941,189	32	37,938
Virginia	278	387,332	27	26,388
Washington	617	828,482	23	13,212
West Virginia	159	186,110	9	5,604
Wisconsin	44	43,684	34	33,977
Wyoming	4,723	4,045,236	87	62,263
Total over-the-counter filings	36,877	38,794,314	1,303	2,175,314
Simultaneous filings				
Public domain				
Alabama	153	23,697	12	1,970
Alaska	30	13,422	13	4,141
Arizona	98	217,903	15	32,458
Arkansas	79	58,497	1	640
California	925	404,539	102	77,379
Colorado	5,681	5,825,464	484	703,779
Florida	37	5,777	12	1,539
Idaho	167	468,668	44	100,339
Kansas	50	13,787		
Louisiana	188	20,385	39	5,925

TABLE 37.—*Noncompetitive oil and gas and geothermal leasing, fiscal year 1986—continued*

Geographic State	Leases in effect as of September 30, 1986[a]		Leases issued during fiscal year	
	Number	Acres	Number	Acres
ichigan	57	81,542	2	5,536
ississippi	150	20,321	24	14,823
ontana	4,580	4,874,374	580	761,303
ebraska	141	48,443	23	6,086
evada	1,522	2,888,247	227	630,886
ew Mexico	6,284	5,058,208	684	732,581
orth Dakota	462	188,230	46	18,801
klahoma	384	51,836	47	20,083
regon	164	430,848	32	186,834
outh Dakota	402	582,679	123	258,417
exas	1	200	....	....
tah	5,135	6,227,214	526	873,348
ashington	17	47,181	5	880
yoming	28,542	18,121,325	2,848	2,276,805
Total	53,208	45,772,808	5,679	6,714,884
Acquired lands				
labama	82	90,240	18	19,111
rizona	8	4,380	2	1,886
rkansas	150	108,888	....	....
alifornia	11	1,042	3	122
olorado	438	282,804	55	27,484
lorida	182	432,625	8	30,386
daho	4	2,500	3	2,448
ndiana	1	82	....	....
ansas	16	9,421	4	2,088
entucky	20	17,211	10	5,121
ouisiana	288	244,472	35	22,897
aryland	2	882	....	....
ichigan	254	178,188	43	21,488
innesota	2	625	....	....
ississippi	1,187	738,288	78	58,474
ontana	808	868,778	152	171,314
ebraska	40	38,727	12	5,146
New Mexico	83	51,125	7	1,461
North Dakota	770	581,881	87	71,848
Ohio	13	6,684	5	884
Oklahoma	212	134,083	31	21,872
Oregon	6	1,758	....	....
Pennsylvania	2	768	....	....
South Dakota	80	88,865	38	43,870
Tennessee	1	94	....	....
Texas	270	150,251	45	38,856
Utah	18	10,460	3	463
Virginia	43	77,864	28	54,874
West Virginia	87	187,778	43	78,487
Wyoming	328	127,843	41	14,888
Total	5,586	4,518,705	764	884,229
Public domain and acquired lands				
Alabama	236	113,837	30	21,881
Alaska	30	13,422	13	4,141
Arizona	104	222,283	17	33,883
Arkansas	238	188,485	1	840
California	838	405,581	106	77,501
Colorado	6,119	6,108,288	539	731,243
Florida	229	438,402	21	31,894
Idaho	171	481,188	47	102,787
Indiana	1	82	....	....
Kansas	86	23,208	4	2,088
Kentucky	20	17,211	10	5,121
Louisiana	488	284,887	74	28,822
Maryland	2	882	....	....
Michigan	311	238,740	46	28,841

TABLE 37.—*Noncompetitive oil and gas and geothermal leasing, fiscal year 1986—concluded*

Geographic State	Leases in effect as of September 30, 1986[a]		Leases issued during fiscal year	
	Number	Acres	Number	Acres
Minnesota	2	625	....	....
Mississippi	1,387	758,809	103	74,087
Montana	5,906	5,831,152	742	882,817
Nebraska	161	87,170	36	11,231
Nevada	1,522	2,888,247	237	630,865
New Mexico	6,347	5,169,333	671	734,012
North Dakota	1,232	790,581	146	90,749
Ohio	13	6,684	5	884
Oklahoma	876	165,918	78	42,885
Oregon	170	432,808	32	186,804
Pennsylvania	2	768	....	....
South Dakota	483	682,864	162	300,087
Tennessee	1	94	....	....
Texas	271	180,451	46	38,856
Utah	5,164	6,237,864	529	873,701
Virginia	43	77,864	28	54,874
Washington	17	47,181	5	880
West Virginia	87	167,778	43	78,487
Wyoming	28,870	18,248,988	2,887	2,291,570
Total simultaneous filings	58,773	50,281,511	6,443	7,408,123
Total oil and gas	95,680	90,085,825	7,748	8,584,437
Geothermal				
Over-the-counter filings				
Public domain and acquired lands				
Arizona	7	14,321	....	....
California	223	388,853	38	58,815
Colorado	2	2,479	....	....
Idaho	2	1,926	....	....
Nevada	318	844,586	32	90,033
New Mexico	43	61,315	1	240
Oregon	282	514,821	33	58,539
Utah	15	37,343	4	8,827
Washington	48	71,409	20	32,889
Total over-the-counter filings	948	1,585,144	129	211,153
Total geothermal	948	1,585,144	129	211,153
Grand Total	96,588	91,680,969	7,876	8,795,590

[a] Includes leasing actions during the fiscal year as shown in the two right-hand columns of this table.

Senator Melcher

10. Q. What is the total acreage of federal lands which are not available for onshore oil and gas leasing? This is what percentage of total federal lands?

A. There are approximately 330 million acres of Federal land that are not available for leasing due to their location within National Parks, Wildlife Refuges, Designated Wilderness Study Areas, military use, incorporated city limits, etc. This represents approximately 45 percent of the total onshore Federal acreage.

It should be noted however that most of this land is not prospectively valuable for oil and gas. The USGS has found that there are only 260 million acres of land in the entire Lower 48 States that are prospectively valuable for oil and gas.

Senator Melcher

11. Q. What is the total acreage of federal lands which are available for oil and gas leasing but are not currently under lease?

A. While we do not keep statistics on the Federal mineral estate, it is estimated that there are 310 million acres of Federal land currently available for leasing which is not under lease.

Senator Melcher

12. Q. What is the total acreage of federal lands which are available for oil and gas leasing but have never before been leased?

A. There are no statistics available on the acreage which has never been under lease. It may assist you to know that approximately 310 million available acres are currently unleased and BLM has issued leases for an aggregate of 79.6 million acres since 1981 that had not been leased before.

Senator Melcher

13. Q. In testimony before the House Subcommittee on Mining and Natural Resources on May 7, 1985, the Department stated that it had imposed a requirement that the first year's rental accompany each SIMO lease application to guard against fraud and abuse by filing services.

The Department issued proposed rules June 12, 1987, in which it requested comments on what actions could be taken on changes to fees charged in connection with the filing of SIMO applications to increase participation in the process.

o If the Department does decide to change the fees, what measures does the Department contemplate to prevent abuse of the SIMO system?

A. The Department continues to be concerned about a recurrence of wide spread abuse of the simultaneous oil and gas (SOG) leasing system and for that reason has proposed in the June 12, 1987, rulemaking that we limit agency for SOG filers to the attorney-in-fact so that one agent cannot represent, hence control, the filings of many filers; that we make the application the offer to remove the opportunity of speculators to "shop" won leases and decline them if no takers are found; and that we continue advance rental even if fees are lowered. Likewise, we support anti-fraud measures and penalties in proposed legislation. We feel that these measures together with those in place will help us control abuse.

Senator Bumpers

1. Q. OTC Issue - Under current law, if someone acquires a noncompetitive lease and finds oil on that lease, the Department is required to draw a KGS around the producing area and lease the KGS lands competitively. If we enact S. 1388, i.e. eliminate the KGS test and substitute a market test but continue to allow OTC lands to be leased noncompetitively without any market test--

- What happens if oil is discovered on a non-competitive lease in the future?
- How will the Department handle the lands surrounding that new area of production?
- Would you anticipate public pressure not to lease the surrounding lands for a dollar an acre?
- Would the Secretary exercise his discretionary authority to withdraw lands from leasing?
- Would the Secretary have authority to require competitive leasing on the surrounding lands?

A.
- If oil and gas is discovered on a non-competitive lease in the future the royalty rate specified in the terms of the lease will apply to that production. When the lease is relinquished the lands will be available for leasing again only through the competitive system.
- The surrounding non-competitive lands will remain available for non-competitive leasing. The Secretary has no discretion under S. 1388 to offer those lands competitively.
- We would expect some public pressure to lease those lands competitively. However, there would be few occasions when the surrounding lands would not either already be under lease or have been previously leased and therefore available only competitively because it is industry practice to lease as much land as possible prior to drilling wells.
- The Secretary has the authority to withdraw lands from leasing only if he follows a prescribed process. The Secretary has the discretion not to lease if he so desires. But if he chooses to lease he must follow the competitive-noncompetitive dictates of the Mineral Leasing Act however amended. S. 1388 does not give the Secretary the discretion to lease noncompetitive lands (as defined by S. 1388) competitively.

Senator Bumpers

2. Question OTC Issue - How does the Department currently define "over-the-counter" lands? How much land - in acreage or percentage terms is potentially available for leasing "over-the-counter" today? Can you provide the committee with an estimate for the record?

Answer OTC lands today are defined as (1) heretofore unleased lands, or (2) lands offered for lease but not leased, which are not in a KGS. It is virtually impossible to separate estimates of lands available for OTC from that available noncompetitively because SOG and OTC tracts change back and forth.

In 1984 BLM leased 5.2 million acres OTC, approximately 25 percent of all acreage leased. The BLM is currently issuing approximately 14 percent of its leases covering 2 million acres by over-the-counter applications.

Senator Bumpers

3. Question - OTC Issue - OTC land is often described as land that has never been leased and the lottery system is described as encompassing previously leased lands. It is my understanding that that description is not strictly correct. The regulations governing the simultaneous filing system (lottery) state that any parcels which do not receive a bid in the lottery then become available in the over-the-counter system (43 CFR Sec. 3112.7).

Given the low oil prices of the past year, is it fair to assume that a significant number of previously leased parcels may not have received bids in the lottery and are not available over-the-counter? Can you provide the committee with an estimate of the acreage involved over the past five years?

Answer - The ability to make available SOG acreage for OTC leasing if no SOG filings are received has been in place only since 1982. In the approximately 5 years since, the first several years were relatively vigorous for the industry and few SOG tracts went unleased and unfiled upon.

The conversion of SOG and OTC acreage is a relatively new phenomenon. The accompanying data on Parcels without Applications fit that category, noting that acreage can be had by multiplying the parcel numbers by a 1,200 acre average parcel size. The total for August 1984 to December 1987 is 19,145 parcels and about 23 million acres.

Senator Bumpers

4. Question - Competitive Bid Amounts - Please provide for the record the average bid per acre for competitive leases, the range of bids, and the percentage of leases for which no bids were received over the past five years.

Answer - The following are the bid statistics that are available for the past five years:

	Avg. Bid Acre Accepted	Per Acre Highest Bid Placed	% of Acreage Offered Receiving Greater than Minimum Bid
1986	$ 76.53	Not Available	62
1985	171.97	$11,380	52
1984	235.35	43,070	88*
1983	197.77	15,000	88**
1982	302.38	Not Available	Not Available

* Excludes Alaska - % of Acres Receiving Bids including Alaska is 10%
**Excludes Alaska - % of Acres Receiving Bids including Alaska is 22%

Senator Bumpers

5. Minimum Bid Level - Please provide for the record an estimate of the percentage of leases which would be issued competitively at a $20 minimum bid level, and at $15, $10, $5, and $1/acre.

Answer The following is our best estimate of the percentage of leases that would be issued above the various minimum bid levels. This estimate is based on current market conditions. As oil prices rise we would expect the percentages to increase accordingly.

Minimum Bid Per Acre	% of Lease Sold Above the Minimum Bid
$ 1	80
5	70
10	40
15	20
20	15

These are based on the distribution of bids received in recent State of Wyoming competitive lease sales.

Senator Bumpers

6. Question - Lease Assignments - During the discussion of the Amos Draw incident, you mentioned that those leases won in the lottery were resold for a "rumored" price of $100 million. Would it be useful for the Secretary to be given authority to request information on the amount of consideration paid for Federal leases in third party transactions?

Answer - Providing the Secretary the authority to require information on the consideration paid for Federal tracts sold privately would yield results and be accurate only if the authority also exempted such information from disclosure. However, the reason for obtaining such information was tied to our need to evaluate bids. Neither S. 66 or S. 1388 require evaluation and the exposure of lands of any interest at all to competition under virtually all circumstances would eliminate the need for evaluation, hence, for disclosure. It is quite unlikely any lands similar to Amos Draw could sneak through under S. 1388 and virtually impossible under S. 66, the difference being the "holiday" for present OTC lands at passage under S. 1388.

Senator Bumpers

7. Question Confidentiality of Industry Nominations - Under S. 66, parcels may be nominated by industry to be placed on a parcel availability list which is posted for a short period prior to an oral auction. Independents have expressed concern about having their nominations exposed to the public scrutiny of their competitors during this period. Would BLM protect the confidentiality of these nominations? How would you propose to do so? Is additional legislative authority necessary.

Answer Authority to keep nominations confidential would not hurt but likely is not needed. We do not foresee this as nearly as troublesome as the industry does because of the widespread practice to preserve anonymity of using landsmen to nominate and, if needed, bid as is common in State sales, most of which are competitive. BLM could accept confidential nominations under some systems of implementing S. 66 or S. 1388. The method likely to be used is to require some down payment on the minimum bonus. This minimum could be collected in the form of a bank check thereby not disclosing the nominator and giving the payee a serialized receipt which is coordinated with the nomination description. This would be advantageous administratively to avoid frivolous nominations. This also will serve to not delay tract availability.

Senator Bumpers

8. Question Recycle Provision - Under S. 66, if lands which were subject to a competitive test, failed to receive the minimum bid, and failed to receive a SIMO application are then available over-the-counter for one year. However, at the end of one year these lands are not automatically recycled through the competitive system. They would only be recycled if interest is expressed after the year has passed. Independents have expressed concern that the one year "recycle" provision of S. 66 would cause a backlog in the leasing system.

Please comment.

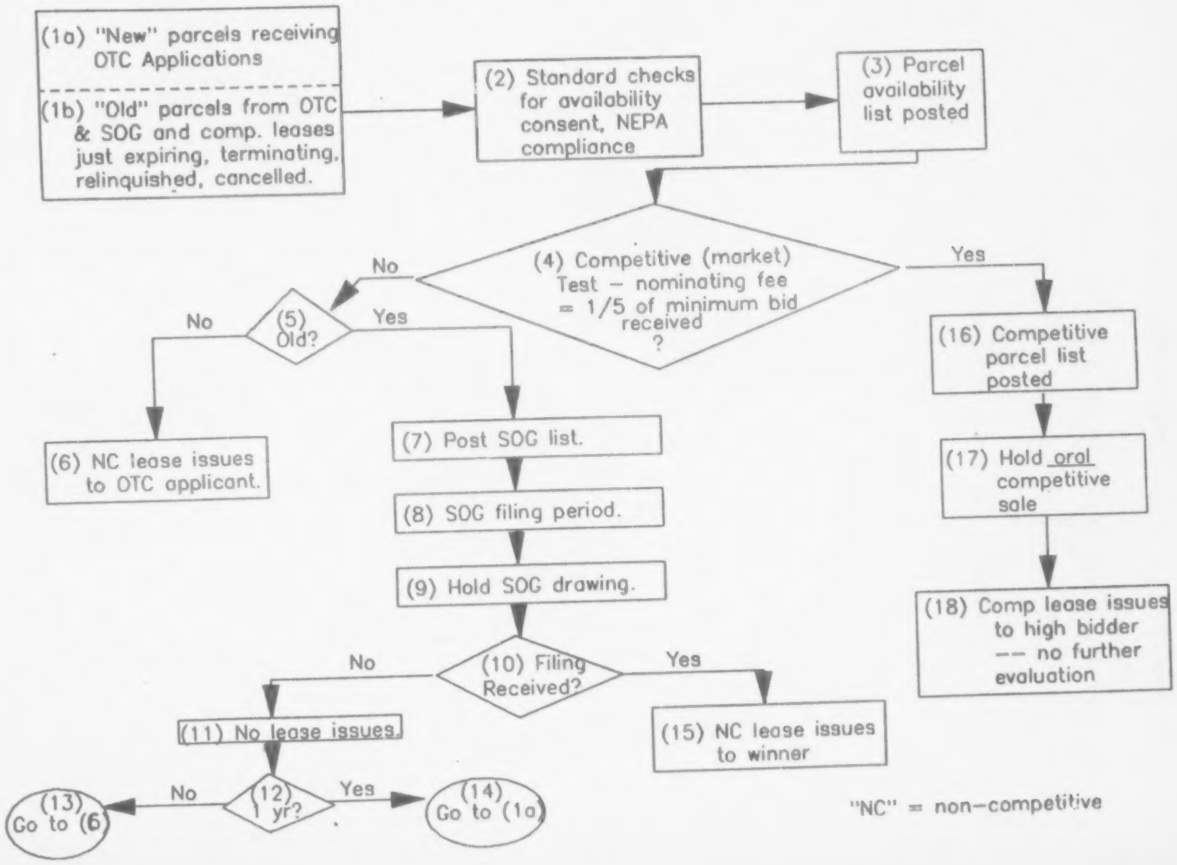
Answer While we do not share the concern that a backlog would occur because of this provision, we do prefer a longer period for over-the-counter availability of, say, three years. This would provide a more direct and timely method for lease issuance on lands in which the market has recently demonstrated no interest. In addition, some modest administrative cost savings would result.

Senator Bumpers

9. Question - Operation of System - Please provide for the record a description of how the Department would implement S. 66.

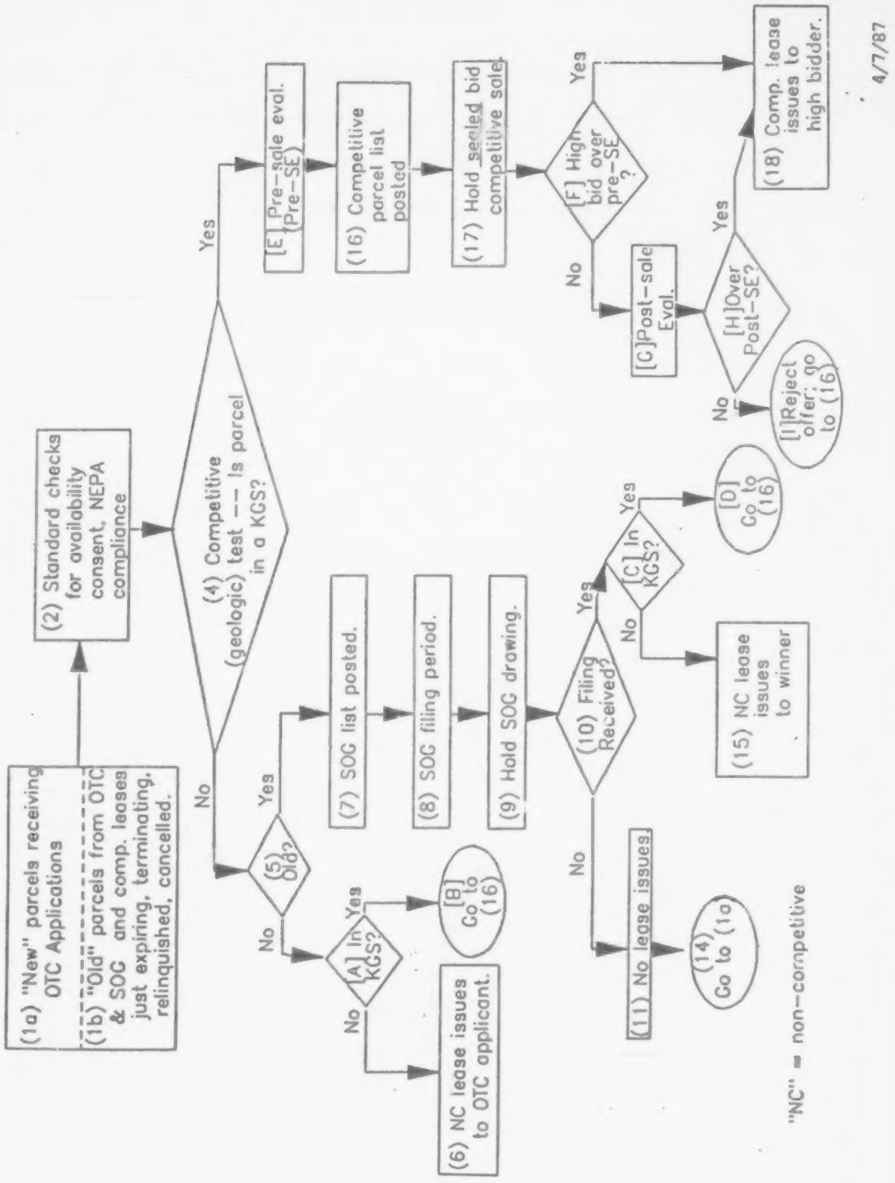
Answer - The accompanying flow chart shows a likely implementation for S. 66.

S.66 PROPOSED OIL & GAS LEASING SYSTEM


(1a) "New" parcels receiving OTC Applications
(1b) "Old" parcels from OTC & SOG and comp. leases just expiring, terminating, relinquished, cancelled.
(2) Standard checks for availability consent, NEPA compliance
(3) Parcel availability list posted
(4) Competitive (market) Test – nominating fee = 1/5 of minimum bid received ?
No
Yes
(5) Old?
No
Yes
(6) NC lease issues to OTC applicant.
(7) Post SOG list.
(8) SOG filing period.
(9) Hold SOG drawing.
(10) Filing Received?
No
Yes
(11) No lease issues.
(12) 1 yr?
No
Yes
(13) Go to (6)
(14) Go to (1a)
(15) NC lease issues to winner
(16) Competitive parcel list posted
(17) Hold oral competitive sale
(18) Comp lease issues to high bidder –– no further evaluation

"NC" = non–competitive

EXISTING OIL & GAS LEASING SYSTEM


(1a) "New" parcels receiving OTC Applications
(1b) "Old" parcels from OTC & SOG and comp. leases just expiring, terminating, relinquished, cancelled.
(2) Standard checks for availability consent, NEPA compliance
(4) Competitive (geologic) test –– Is parcel in a KGS?
No
Yes
(5) Old?
No
Yes
[A] In KGS?
No
Yes
(6) NC lease issues to OTC applicant.
[B] Go to (16)
(7) SOG list posted.
(8) SOG filing period.
(9) Hold SOG drawing.
(10) Filing Received?
No
Yes
(11) No lease issues.
(14) Go to (1a)
[C] In KGS?
No
Yes
(15) NC lease issues to winner
[D] Go to (16)
[E] Pre-sale eval. (Pre-SE)
(16) Competitive parcel list posted
(17) Hold sealed bid competitive sale
[F] High bid over pre-SE ?
No
Yes
[C] Post-sale Eval.
[H] Over Post-SE?
No
Yes
[I] Reject offer; go to (16)
(18) Comp. lease issues to high bidder.
"NC" = non-competitive
4/7/87

Senator Bumpers

10. Question - Fraud - Past discussions of fraud and abuse associated with the onshore leasing system have centered on the lottery system. Have there been instances of fraud in the over-the-counter system or the competitive system? Would these situations be addressed adequately by the provisions of S. 66 and S. 1388?

Answer - The type of fraud associated with the OTC system is actually common to SOG and competitive as well and involves the so-called "forty acre merchants" who split tracts into virtually unusable small sub-parcels and sell them to the uninformed at high prices. We believe that the authority provided under both S. 66 and S. 1388 to disapprove acreages of less than 640 acres (2,560 acres in Alaska) for assignment will control the problem.

Senator Conrad

1. Question

I am interested in the impact of a two-tiered leasing program with a $20 minimum bid requirement. Please compare this proposal with the current Federal onshore oil and gas leasing program in the following areas:

(1) level of leasing activity; (2) participation by independent oil and gas producers in the leasing program; and (3) level of revenues from the program?

Answer

We expect a small increase in the level of leasing activity under S. 66 because all lands now available will continue to be available but lands now trapped in a KGS not worth at least $5/acre, the minimum bid, are unavailable for noncompetitive lease. These will be available under S. 66.

- We anticipate little difference in independent oil and gas produce participation because at least 80 percent of the lands will still be available noncompetitively through SOG and OTC leasing. Independents compete successfully in current competitive sales.

- We expect S. 66 to generate slightly more revenues than the current program. The "cream" lease will be awarded competitively. The remainder will be leased through current noncompetitive means. The present noncompetitive system generates approximately $22 millions in filing fees annually. We estimate that approximately 85 percent of the leases issued today would not receive bids of more than $20 per acre. Therefore, we would expect that there would still be very high filing fee receipts under a two-tier system with a minimum bid of $20 per acre. Filing fee receipts would of course decline dramatically as the minimum bid is lowered.

With regard to the $1 minimum bid requirement of S. 1388, we expect the following:

- We expect a small increase in the level of leasing activity under S. 1388 because all lands now available will continue to be available. In addition, lands now trapped in a KGS but not worth at least $5/acre, the current minimum bid, which are unavailable for noncompetitive lease will become available for noncompetitive leasing. These will be available under S. 1388.

- As with S. 66 we anticipate little difference in independent oil and gas producer participation because at least 80 percent of the lands will still be available noncompetitively through SOG and OTC leasing. Independents compete successfully in current competitive sales.

- While S. 1388 may generate more income than the current leasing program, we expect S. 1388 will initially generate less revenues than S. 66. S. 1388 will eliminate the SIMO lottery and the revenues it generates. While acreage worth $1 to $20 an acre will be leased competitively, past experience has indicated that lotteries generate more money for low value tracts than does competitive leasing (e.g. State of Wyoming switch from noncompetitive to all-competitive leasing). Because lands which do not receive bids become available for OTC leasing only under S. 1388, if oil prices should rise in the future, these will be unavailable for competitive bidding. Therefore, we expect S. 1388 will generate far less revenues than both the current leasing program and S. 66 over time

APPENDIX II

Additional Material Submitted for the Record

American Petroleum Institute
1220 L Street, Northwest
Washington, D.C. 20005
202-682-8100

Charles J. DiBona
President

July 10, 1987

The Honorable
John Melcher
Chairman, Subcommittee on Mineral
  Resources Development and Production
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510

Dear Senator Melcher:

I appreciate the opportunity to comment on S. 66 and S. 1388, legislation to revise the onshore oil and gas leasing system, and submit the attached statement for your Subcommittee's hearing record of June 30.

Thank you for your assistance.

Sincerely,

Charles J. DiBona

Attachment

STATEMENT

of the

AMERICAN PETROLEUM INSTITUTE

submitted to the

SUBCOMMITTEE ON MINERAL RESOURCES
DEVELOPMENT AND PRODUCTION

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

on
S. 66 and S.1388
AMENDMENTS TO THE ONSHORE OIL AND GAS LEASING SYSTEM

June 30, 1987
Hearing Record

The American Petroleum Institute is a national trade association comprised of some 200 companies and more than 5,000 individuals engaged in petroleum exploration, production, transportation, refining and marketing in the United States. Many of our members are particularly interested in petroleum operations on federal lands. Keeping those lands available for exploration and development is of great importance to the industry and to the energy security of this nation.

We appreciate the opportunity to submit our comments for the hearing record of June 30 on S. 1388 and S. 66, to revise the onshore oil and gas leasing system. API has not taken a position on the existing leasing system or on proposed revisions to it. Instead, API defers to its member companies as well as other industry associations whose memberships include independent petroleum companies with a high stake in the current structure of the leasing system. However, API recognizes that fundamental revisions in the mechanical aspects of the existing system may be acted on by Congress.

In the Subcommittee's deliberations on the proposed legislation, we urge you to keep in mind the basic need for a simple, straight-forward leasing system that facilitates and encourages the search for and production of hydrocarbon resources. In meeting this objective, the system must assure that federal acreage is available for lease in a timely manner and that access is provided to conduct operations.

With regard to the two bills under consideration, we are pleased that the sponsors recognize the adequacy of existing laws and regulations protecting the environment. API opposes any change in existing land use planning requirements that would have the effect of withdrawing lands from access and of imposing new, unnecessary environmental constraints on onshore oil and gas exploration, development and production activities. The industry's record shows that its activities can and do take place compatibly with sensitive environments and other resource uses. We firmly believe that existing statutes and regulations adequately protect the environment and other resources on federal lands. API encourages the members of the Subcommittee to oppose any attempts to add new land use planning or environmental review requirements to the oil and gas leasing system.

SIERRA
CLUB
330 Pennsylvania Avenue, S.E., Washington, D.C. 20003 (202) 547-1141

STATEMENT OF BROOKS B. YEAGER
WASHINGTON REPRESENTATIVE

FOR THE RECORD OF THE SENATE SUBCOMMITTEE
ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION
HONORABLE JOHN MELCHER, CHAIRMAN

REGARDING S.66 AND S.1388
LEGISLATION TO AMEND THE MINERAL LEASING ACT FOR OIL AND GAS

JUNE 30, 1987

The Federal onshore oil and gas leasing program, administered by the Department of the Interior, faces severe environmental, as well as fiscal and management problems. As shown by the clear record of three years of oversight hearings in the House Subcommittees on Mining and Natural Resources, Public Lands, and Interior Appropriations, the program consistently squanders a valuable public resource and threatens unnecessary damage to the environment from the development of our public lands oil and gas resources.

We are submitting testimony and reports detailing specific environmental problems associated with the onshore oil and gas leasing system as attachments to this statement in the hope that they will be printed as part of the Subcommittee's hearing record.

The Sierra Club believes that the environmental problems surrounding the present leasing system are equally as important as the fiscal and management problems which have traditionally been the focus of attention in the Senate debate on the program. We urge the committee to consider amendments to whichever bill is chosen as a markup vehicle

"When we try to pick out anything by itself, we find it hitched to everything else in the universe." *John Muir*

that would improve and rationalize pre-lease planning for oil and gas development on the public lands.

Oil and gas development, although compatible with other uses on much of the public lands, may cause severe and unacceptable environmental impacts in some highly sensitive areas, or in pristine roadless lands or key wildlife habitat. (Cf. attached: "Paradise Leased," Sierra, March-April, 1986; Impacts of Oil and Gas Development Activities in Areas of Environmental Concern, report to the State of Montana Environmental Quality Council, September 9, 1986; "Threat associated with gas and oil development adjacent to Yellowstone National Park," memo to Lorraine Mintzmeyer, Regional Director, National Park Service, from Irving Friedman, Research Geochemist, Branch of Isotope Geology, January 13, 1986).

There seems little question, for instance, that widespread oil and gas development in the Williston Basin area of North Dakota has resulted in the destruction of the wild character of much of the formerly roadless area of the Little Missouri National Grasslands (LMNG), and has caused unforeseen damage to key wildlife habitat in the area, including habitat for wild turkey and bighorn sheep. (Cf. attached correspondence from the North Dakota Game and Fish Department, January 18, 1983 and October 19, 1983).

The oil and gas development of the LMNG, and the destruction of much of the original 231,500 acres of roadless lands, occurred despite the apparent intention of forest planners, stated in planning documents issued in 1974 and 1975, that the existing roadless areas should continue to be managed as roadless indefinitely. By 1983, according to the North Dakota Game and Fish Department, development based on leases which had, for the most part, been issued prior to the development of the 1974 and '75 management plans, had led to extensive roadbuilding in 97,620 acres, and threatened "permanent degradation of the natural character of the LMNG."

The potential for long-term environmental damage and serious impacts on other potential resource uses and values associated with oil and gas development would seem to indicate that leasing decisions, in which the legal commitment to development takes place, should be made only on the basis of careful multiple-use analysis. However, this is only infrequently ~~the~~ case.

In many sensitive areas, it has been mere luck, and not careful planning, which has so far prevented damage from haphazard development. This is especially true in the greater Yellowstone area. In the six national forests surrounding Yellowstone and Grand Teton National Parks, 83% of the available land -- over 5 million acres -- is presently under lease. Yet little or no thought has been given to the potential impacts of large-scale oil and gas development on the parks and the wildlife for which they are justly famous. As of this writing, most of the exploratory wells drilled in this extremely sensitive area have been dry holes; but, should there be a productive find, the responsible land managing agencies would have little legal say over the future course of development. (Cf. attached: *Yellowstone Under Siege; Oil and Gas Leasing in the Greater Yellowstone Region*, Sierra Club, July, 1986; *Environmental Problems in the Onshore Oil and Gas Leasing System*, statement of Philip M. Hocker, before the House Interior Subcommittee on Mines and Mining, May 7, 1985; *Concerning the Planning Requirements for Oil and Gas Leasing on the Public Lands*, statement of Brooks B. Yeager before the House Subcommittee on Mining and Natural Resources, February 4, 1986).

In general, agency practice at both the BLM, which is charged with the overall administration of the leasing program, and the Forest Service, which is commonly consulted on leasing decisions affecting lands in the National Forest System, is to defer meaningful land-use planning until lessees submit applications for permits to drill (APDs). Wholesale leasing decisions committing hundreds of thousands of acres to development as dictated by the leaseholders are frequently made on the basis of a few pages of generic discussion in land-use planning documents. Unfortunately, once leases are issued, agency authority to prohibit development in order to avoid unacceptable environmental damage may be severely constrained. (Cf. attached Memorandum to John Matis, Cache Creek EIS Task Force Leader, U.S. Geological Survey, from Lowell L. Madsen, Acting Regional Solicitor, Rocky Mountain Region, October 10, 1980.)

This "lease now, worry later" approach to land use planning for oil and gas has been repeatedly struck down by the courts as inadequate to evaluate the impacts of a major Federal action under NEPA. (Cf. attached opinions in Bob Marshall Alliance, et. al., v. James G. Watt, U.S. District Court for the District of Montana, CV-82-015-GF, May 27, 1986, and Sierra Club v. Peterson, Court of Appeals for the District of Columbia Circuit, 717 F.2d 1409, 1415, 1983).

There already exists a land-planning system in the context of which improvements in oil and gas planning could be made. The BLM and the Forest Service presently undertake unified multiple use planning under the terms of the National Forest Management Act and the Federal Land Policy Management Act. The land use plans developed pursuant to these statutes, national forest plans and resource management plans, can be, and in isolated instances, have been, used to provide a framework for a careful evaluation of the impacts of oil and gas development on the other resources and uses of the lands under study. (Cf. Final Environmental Impact Statement, Shoshone National Forest, February 1986, and Environmental Assessment for Oil and Gas Lease Recommendations in the South Fork Area of the Shoshone National Forest, 1985). For the most part, however, agency land-use plans have been woefully inadequate in identifying and evaluating the impacts of oil and gas development activities.

Unlike companion legislation (H.R.933) introduced in the House, neither S.66 nor S.1388 addresses the environmental problems associated with the oil and gas leasing system. Both bills limit proposed reforms to the leasing mechanism itself, which has been justly criticized as obsolete, inefficient, and an inducement to fraud.

Insofar as the leasing system itself is concerned, the reforms proposed by each of the two bills before the committee would alleviate some difficulties, while retaining, or in certain cases, exacerbating others. Both bills would abolish the current requirement that the BLM identify known geologic structures (KGSs) as a method of discriminating between tracts which must be leased competitively and those which may be leased non-competitively.

S.66 would substitute a two-tier leasing system in which all leases would be offered competitively for a minimum bid of $20 per acre. Leases which do not receive bids at this price would be dropped into a non-competitive round, which would, in effect, recreate the lottery or SIMO system in order to choose winners from among multiple applicants for individual tracts.

Aside from the obvious question of why Congress would go through the strenuous exertion of enacting reforms for the oil and gas leasing program and reestablish one of the program's most odious components, the leasing mechanism proposed in S.66 raises a number of other disturbing issues. Key among these is the issue of the revenue which would be lost from leases which may not receive bids at $20 per acre or above, but which are worth bidding on at slightly lower prices. Under certain oil price scenarios, this group of leases could be quite substantial, and the foregone revenue from issuing them through the lottery could reach into the hundreds of millions of dollars.

S.1388 would eliminate this difficulty, by setting the minimum bonus bid at $1 per acre, a price at which we can assume that most tracts will be issued competitively. However, because S.1388 would allow the continuation of over-the-counter sales for a large number of leases, it too, raises problems of administration. Any over-the-counter system in which multiple applicants apply for single tracts will invite the resumption of land office bribery and scandal of the kind which characterized the program before the advent of the SIMO system. In addition, revenues which might be obtained from the competitive sale of frontier leases will be foregone.

The Sierra Club believes that many of the difficulties with these "hybrid" leasing proposals can be resolved through the kind of all-competitive leasing system which is proposed by H.R.933, and which had previously been proposed by Senator Bumpers in various bills.

The Sierra Club supports the effort of the House sponsors of H.R.933, and of other key House members, to enact a comprehensive reform of the present oil and gas leasing program. We strongly urge the Senate to consider and support the basic improvements contained in H.R.933 — integrating planning for oil and gas development with the multiple use planning already being undertaken by the BLM and the Forest Service, requiring public notification before leasing or permitting decisions, giving the Forest Service statutory consent authority over leasing on lands in the national forest system, and prohibiting new leasing in wilderness study areas. Only with these improvements will oil and gas leasing and development become an integral — rather than a dominant -- use of the public lands.

(Attachments)

Paradise Leased

Oil & Gas Developers Set Their Sights on the Land of the Elk, the Condor, and the Grizzly

BRUCE HAMILTON & BROOKS YEAGER

THE WESTERN BOUNDARY of Yellowstone National Park is easy to spot from the air: It divides the park's forests from the bleak clearcuts outside. The cuts are a graphic example of the federal government's failure to protect borderlands vital to park wildlife. But an even more menacing threat lies underground.

Much of the subsurface along this boundary has been leased for oil and gas exploration and development. Giving little or no thought to the environmental consequences, the U.S. Forest Service and the Bureau of Land Management (BLM) have opened the way for development of a bustling industrial complex next to the oldest and one of the best-loved national parks in the world.

If these leases are developed, park elk, moose, deer, and grizzly bear that rely on habitat outside the park would find oil rigs, roads, and pipelines in their once-secure mountain refuges. According to National Park Service geologists, holes poked by oil and gas drillers just outside the park could also disrupt the delicate underground plumbing that feeds geysers and other thermal features within Yellowstone Park.

Almost no consideration was given to the plight of grizzlies or geysers by the federal agencies that made the decision to sign away development rights to these lands. Although both the Forest Service and the BLM have elaborate land-use planning processes, almost all oil and gas leasing decisions have been made outside of them, with little or no public notice and no detailed environmental [illegible]

The BLM administers the minerals under most federal lands, including national forests, where it seeks the advice of the Forest Service before leasing. Both agencies generally operate under the assumption that leasing is a mere paper transaction and that development will hardly ever occur. The battle to ensure that national parks and wilderness areas are off limits to new leasing has been won. But almost all other Forest Service and BLM-administered lands are leased indiscriminately. In states with oil potential, as much as 96 percent of the available federal land is leased or under application.

The National Park Service, state wildlife agencies, and conservationists are caught in the awkward position of pointing out the folly of leasing environmentally sensitive lands after most of the decisions have already been made. They admit the impacts of oil and gas development are less severe than those of most other forms of mineral extraction, and acknowledge that it is hard to predict which lands will be developed. But they object to a leasing process that gambles with the public's natural resources, putting irreplaceable wildlife and scenic values on the line and then dealing the public out of the game. This high-stakes wager ignores the special requirements of environmentally sensitive and highly prized tracts of public land. As a result, national treasures are being blindly leased and lost:

- In the canyonlands of southern Utah and the sand dunes and badlands of Wyoming's Red Desert, the Bureau of Land Management has allowed roads, drill rigs, and bulldozers to scar fragile desert lands that were being considered for wilderness designation. In effect, future wilderness boundaries here are being drawn by bulldozers instead of by Congress.
- In the California Desert Conservation Area east of Los Angeles, the BLM has issued 115 oil and gas leases on tracts it had earlier singled out as "areas of critical environmental concern." The conservation area was set aside by Congress as a showcase for the protection of fragile desert resources.
- In the Los Padres National Forest along the central California coast, the Forest Service and BLM are in the process of issuing hundreds of leases covering thousands of acres. Potential lease sites include several roadless areas under consideration for wilderness designation, a proposed wild river corridor along Sespe Creek, and the spectacular Big Sur coastline. Also proposed for leasing is the Sespe Condor Sanctuary, an area set aside to protect the habitat of the endangered California condor. (See "Too Late for the Condor?" January/February 1986.)
- In the Lewis and Clark National Forest next to Glacier National Park and the Bob Marshall Wilderness, hundreds of thousands of acres of grizzly bear, elk, and bighorn sheep habitat have been leased. Exploration has already begun in several areas, even though much of the forest is under consideration for wilderness protection.

MOST OF THE SCANT media attention on the leasing issue has focused on the Greater Yellowstone Ecosystem, an area that includes the park and a large expanse of adjacent acreage that supports park wildlife. Almost 200 exploratory wells have been drilled here, all but five of them dry holes. Conservationists have been trying to prevent damage from individual development projects and, more recently, attempting to eliminate the defects in the oil and gas leasing system that spark these brushfire battles.

Ed Madej, a Sierra Club activist and environmental consultant, paints a grim picture of the situation in Yellowstone. Hired by the Club to conduct a detailed analysis of the oil and gas leasing problem in the six national forests that surround Yellowstone and Grand Teton national parks, Madej found that Forest Service personnel often don't know precisely which national forest lands have been leased. By piecing together information from government files, he found approximately 5.8 million acres of land open for leasing. This figure represents virtually everything outside of designated wilderness areas, amounting to 60 percent of the area's forest land. Of this acreage, about 4.5 million acres are already leased.

With so much public land leased or available for leasing, "oil and gas development has the potential of being the single greatest environmental impact to the Greater Yellowstone Ecosystem," says Madej. "Although there has not yet been a major commercial find within the ecosystem, should such a find occur nothing in the current planning would prevent development of a massive production infrastructure right next to Yellowstone Park itself."

Another part of Madej's study examined the agencies' leasing process. When the federal government leases a coal, oil shale, or offshore oil tract, it prepares a detailed environmental impact statement. The National Environmental Policy Act (NEPA) requires these for any federal action that will have a significant impact on the environment.

But when the government leases lands for *onshore* oil and gas development, it often prepares no environmental review at all—or merely an "environmental assessment." Often only 10 to 20 pages long, these documents are used to analyze the impacts of leasing on hundreds of thousands of acres of public land. Almost every assessment concludes that leasing will have no significant impacts, and that preparation of a more detailed statement is unnecessary. According to the agencies, potential impacts can be dealt with later, if and when site-specific development plans are proposed by industry.

Taxpayers Lose in the Oil Lottery

For a $75 filing fee and an annual rent of a dollar per acre, the government in 1983 leased to speculators 18 tracts of public land in Wyoming directly adjacent to a producing oil and gas field. Within weeks, 12 of the 18 tracts were resold to an oil firm that operated some nearby wells. The leaseholders made more than $100 million in the transaction.

The recent history of the federal leasing program is replete with such blunders: The government leases high-potential tracts through a noncompetitive lottery, only to discover later that they contain extremely valuable oil or gas deposits. Congressional committees and the courts have grown increasingly critical of the financial and administrative side of the government's leasing system, and have frequently forced partial or total suspensions of the lottery.

Under the present system, any tract presumed to contain valuable oil and gas deposits must be leased competitively. But the Bureau of Land Management's method of determining where valuable deposits lie is inadequate, according to a recent U.S. Court of Appeals ruling. The agency lacks a meaningful way to discriminate between valuable and nonvaluable properties, the ruling stated.

The vast majority of tracts—more than 97 percent—are leased noncompetitively. Noncompetitive leases are sold either over the counter (for previously unleased tracts) or through the lottery.

A recent report issued by the House Appropriations Committee accused the Interior Department of losing millions of dollars annually through the lottery, and of allowing private interests to interfere with the supposedly impartial system. Even a better-run lottery would still spawn consumer fraud by unscrupulous lease brokers, who specialize in bilking unwary consumers by promising that they will win valuable properties in the lottery.

Taxpayers and consumers, as well as environmentalists, have a big stake in the efforts to reform the leasing system this year. —*B.Y.*

"Unfortunately," says Madej, "under Interior Department policy, the issuance of a lease commits a tract of land to development, so even the best-intentioned land managers may later find that the option of avoiding irreparable damage to a sensitive area has been foreclosed."

The Little Missouri National Grasslands in North Dakota provide a graphic case in point. Until recently these rolling prairies and colorful badlands surrounding Theodore Roosevelt National Park were the wildest part of the Great Plains still in public ownership. Thousands of acres of flowing grassland used to be sole province of the rancher and deer hunter—much the way it was when the Rough Rider himself vacationed here.

Now the Rough Rider has been displaced by oil industry roughnecks. Pump jacks rock back and forth just across the highway from the national park's headquarters. In the last 15 years thousands of acres of wild grassland have been crisscrossed with service roads and utility lines. This once-wild prairie with its ranches and wildlife had the misfortune of being located in the heart of the Williston Basin—one of the hottest onshore oil prospects in the country.

In the early 1970s Custer National Forest planners vowed to preserve the remaining Little Missouri roadless areas even as they encouraged oil development. But once the leases were signed and oil was struck, there was no turning back. An industrial complex sprawled across areas that, according to Forest Service land-use plans, were supposed to remain roadless.

State wildlife managers decried the agency's lack of concern for wildlife on these roadless lands. "It is apparent to us now that the rapid pace of development and the commitment to honor existing leases led to unanticipated and poorly evaluated impacts," said State Game and Fish Department Coordinator Michael McKenna in a 1983 letter to the National Wildlife Federation.

Taking the story of the Little Missouri Grasslands as a grim warning of what could happen to Yellowstone and other cherished wild lands, the Sierra Club has launched a major campaign to force the government to undertake thorough

The Well That Woke Up Yellowstone's Neighbors

“THIS IS THE BEST big-game country around. That's why I live here,” says Don Schmalz, a Wyoming outfitter who lives along the North Fork of the Shoshone River. “In winter you can drive down the road in the early morning or late evening and see 800 elk and a hundred bighorn sheep.”

The road from Cody, Wyo., to Yellowstone National Park follows the North Fork of the Shoshone River. To the south is the Washakie Wilderness; to the north, the North Absaroka Wilderness.

Each winter, elk and sheep descend from their summer ranges in the park and neighboring wilderness areas to seek refuge in the North Fork Valley. North Fork side drainages are also a favorite stomping ground for the grizzly bear—a species threatened with extinction in this area.

To wildlife the North Fork is just as crucial to survival as the park or wilderness lands. But there is an important difference between the North Fork Valley and surrounding lands: Most of the valley has been leased for oil and gas development. In the park and wildernesses, leasing is forbidden by law.

Oil development is nothing new to the Cody area. Old, established oil fields lie in the sagebrush-covered hills just east of town. But until recently, hardly any interest had been shown in exploring the rugged national forest lands to the west. Only after the 1973 OPEC oil embargo and the subsequent rise in the price of oil did speculators begin picking up leases in the forest.

Local citizens were not informed about the forest leasing. But even if they had known about it, most of them probably wouldn't have cared. The prevailing attitude was that leasing wasn't harmful; it was just a transaction on paper.

Around 1981 this attitude began to change. Seismic crews started blasting throughout the forest to determine whether oil-bearing strata were likely to lie below. “Those seismic crews had no regard for the country or the wildlife,” Schmalz says. “I remember being up on Jim Mountain in the North Fork just before the bighorn sheep were ready to lamb. I watched as the crews started blasting and sending sheep running all along the side of the mountain.”

The blasting was a temporary nuisance; as winter settled in, the companies gathered their information and left. But by 1983 the blasting had revealed at least one interesting prospect. Soon the federal government was faced with Marathon Oil Company's application for a permit to drill an exploratory well on a ridge overlooking the North Fork.

Because of the difficult terrain, the steep, unstable soils, and the importance of the wildlife habitat, Marathon offered to commute to the drill site by helicopter during the exploratory phase. If the company struck commercial quantities of oil or gas, however, it expected to be allowed to build roads and utility corridors to service the site.

When local residents and Wyoming conservationists learned of Marathon's proposal, they met with the Forest Service to urge rejection of the application. Seismic blasting had been bad enough, but the specter of an oil or gas field along the North Fork was completely unacceptable.

The Forest Service and the Bureau of Land Management (BLM) dutifully prepared an environmental impact statement on the proposed drilling permit. The agencies concluded that the well “would result in a four-month temporary disturbance, with no long-term adverse environmental consequences *unless* the well goes to production [emphasis added].”

Local sportsmen, landowners, and environmentalists mounted a campaign to block Marathon's proposal. They argued that oil and gas development was incompatible with the North Fork's fragile environment. But the agencies were unresponsive. They said that under existing laws they did not have the authority to deny the application on environmental grounds. The message was all too clear: Once the lease was issued, it conveyed a legal right to develop the land and build roads and utilities. If local citizens and state agencies didn't want development, they should have voiced their concerns when the leases were being considered. Now it was too late.

So why didn't North Fork citizens speak up before the leases were issued? They didn't have a chance. The responsible Forest Service official apparently saw no problem with the application and recommended routine approval to the BLM. Neither agency consulted the public or took a hard look at the consequences before agreeing to lease.

The only pre-lease review was a 1979 environmental assessment in the Forest Service's Rocky Mountain Region. It ignored site-specific problems and concluded that leasing would have no significant environmental effect. The cursory 15-page document gave the green light to leasing more than 17.4 million acres of national forest lands, including the entire North Fork Valley and 900,000 acres of the Shoshone National Forest.

When the citizens of the North Fork found out how the decision had been made to commit this spectacular wild valley to oil development, they went to court. But U.S. District Court Judge Clarence Brimmer sided with the government. The agencies' procedure may not have been ideal, but in the eyes of the judge, it was legal.

With the court challenge lost, Marathon moved quickly to exercise its development rights. It drilled a deep hole—5,000 feet—in the summer of 1985, but found no oil. “We all breathed a sigh of relief when we found that it was a dry hole,” a state BLM official told Sierra Club Treasurer Phil Hocker. According to Schmalz, there were few signs of sadness along the North Fork when Marathon pulled out its drill pipe and flew away. —*B.H.*

environmental studies and land-use planning before public land is leased for development.

The campaign has met with some success in the courts. The Sierra Club Legal Defense Fund won a major battle for pre-lease planning in May 1981, when a federal appeals court ruled that the Forest Service should either prepare an impact statement prior to leasing or prohibit surface disturbance of the area leased. But the federal agencies refused to apply the decision outside the area at issue—a steep, scenic mountain range called the Palisades that straddles the Idaho-Wyoming border just south of Grand Teton National Park. Elsewhere the Forest Service persisted in its lease-first, worry-later approach.

In 1984 U.S. District Court Judge Paul Hatfield suspended all leases in two national forests in Montana pending completion of adequate pre-lease environmental impact statements. The Montana decision is being appealed by the federal government, the oil industry, and Mountain States Legal Foundation, the law firm headed by James Watt before he became Secretary of Interior. The firm's director told Wyoming's *Casper Star-Tribune* that if the decision is allowed to stand, "oil and gas leasing in national forests as we know it today will be gone."

Conservationists don't go that far—but they do hope the victory will spawn significant reforms in the leasing system. So far, the government's response has been less than encouraging: After each ruling the agencies have tried to satisfy the court regarding the specific site at issue, while leaving the basic leasing process unchanged.

The agencies' reluctance to apply court-mandated reforms broadly has forced conservationists to turn to Congress for relief. The Sierra Club is taking the lead in a congressional campaign designed to establish more precise statutory requirements for pre-lease environmental review. Under the Club's plan, adequate public notice and participation would be required in sensitive leasing decisions, and areas unsuitable for leasing would be identified and removed from consideration. Oil and gas leasing decisions would no longer be made outside the agencies' land-use planning processes. The Forest Service would be given responsibility to lease its own land rather than just advise the BLM, and consultation with other resource agencies, including the National Park Service and state wildlife agencies, would be required.

The time is right for a change. Bills to revamp the financial and administrative side of the onshore oil and gas leasing system are now pending in Congress. There is a widespread feeling that the system is "subject to fraud, an invitation to speculation, and financially disastrous for the government," according to Sen. Dale Bumpers (D-Ark.). Dissatisfaction with the government's primary method of leasing—a noncompetitive lottery—has added strength to congressional voices calling for change in other aspects of the system.

As Rep. Morris Udall (D-Ariz.), chair of the House Interior Committee, put it, the present leasing system is "an administrative and environmental nightmare crying out for reform."

Udall's staff members have already included new environmental planning requirements in legislation circulated for review on Capitol Hill. Other key House members, including Public Lands Subcommittee Chair John Seiberling (D-Ohio), have made clear their intention to press for even more stringent reforms.

"The BLM's oil and gas leasing policies make a mockery of the land-use planning processes mandated by law," says Seiberling. "It's clear that the BLM leasing people give little or no consideration to the environmental impacts of their programs. This is serious not only for [BLM] lands but for national forest lands and wildlife refuges as well."

Blind luck and a depressed oil market have delayed the inevitable: a major commercial find of oil or gas within shouting distance of Yellowstone, Glacier, or another national treasure. But the matter can't be left to luck. The federal government has given preferential treatment to the oil and gas industry for too long. For the grizzlies, geysers, canyonlands, and condors—for the protection of thousands of acres of public lands—the nation needs a new leasing system now. ■

Bruce Hamilton *is the Sierra Club's Director of Conservation Field Services;* **Brooks Yeager** *is the Club's Washington representative in charge of energy issues.*

Reprinted from Sierra, *March/April 1986*

Additional copies available at 30¢ each (members, 15¢) from:

Information Services
Sierra Club
730 Polk Street
San Francisco, CA 94109

WYOMING CHAPTER
SIERRA CLUB

REPORT ON LEASE W-88886

JACKSON HOLE, WYOMING

An error by the Bureau of Land Management has recently resulted in the issuance of an oil and gas lease in important Grizzly Bear and riparian habitat, on the East boundary of Grand Teton National Park in Jackson Hole, Wyoming. The Bureau has "cancelled" the lease, but the legality of the cancellation is being challenged by the EXXON corporation and the lessee. It is uncertain whether the cancellation will be upheld.

The lease, known as W-88886, lies on National Forest land, immediately alongside a major scenic tourist highway to Grand Teton and Yellowstone National Parks. It covers several miles of meandering riverbank and willow bottoms on the Buffalo Fork of the Snake River, an area intensely used by moose and other wildlife and waterfowl.

In May of 1985 the Forest Service had requested that no further leases be issued in the area until a Forest Plan and environmental study could be completed. The BLM agreed. However, a processing error resulted in issuance of W-88886 effective 1 December 1985. "Clearly, we made a mistake in issuing this lease," wrote BLM State Director Hillary A. Oden on 31 December 1985.

Lease W-88886 raises other questions beyond its threat to nationally-important wildlife and environmental issues:

W-88886 was issued "Over-the-Counter," a process through which a lease is simply granted to the first party filing for the tract. A filing fee of $75, and a payment of the first year's rental of $1 per acre, is all that is required. No competitive bidding is conducted, and there is no "lottery" drawing permitting other applicants a chance to acquire the lease rights.

The "Over-the-Counter" process is used only for vacant tracts which have not been previously leased and which are not in a "known geological structure." This tract had been removed from leasing by action of then Interior Secretary Krug in 1947. However, a loophole in Krug's action made the area available if it was "necessary to establish or complete a logical unit area." An operating unit agreement was approved (with no public notice or input) August 13, 1984 which nominally included the then-unleased W-88886 area.

"Not blind opposition to progress, but opposition to blind progress."

REPORT ON LEASE W-88886, p2:

Issuance of this lease without competitive bidding appears highly questionable. According to Secretary Krug's instructions, the unitization plan should not have been approved in the first place unless it was found that "the structural conditions are such as to warrant the belief that the lands included therein may contain oil or gas." Furthermore, EXXON drilled a wildcat well two and one-half miles from W-88886 in 1984-5, and has filed an application to drill a new test this summer less than one-half mile from the W-88886 tract.

The lease was initially issued to Clayton W. Williams, Jr, of Denver. Not surprisingly, it was assigned to EXXON shortly after being issued. The payment from EXXON to Williams is unknown. EXXON and Williams have joined together in appealing the cancellation. Appeal proceedings are underway before the Interior Board of Land Appeals. The issue is not expected to be resolved for several months.

The only environmental documentation covering the leasing of this area is an "Environmental Analysis Report" covering all leasing on the Teton National Forest, approved March 17, 1972. The text of the report is five pages long. The Teton National Forest covers 1,666,534 acres.

The Wyoming state office of the Bureau of Land Management has been involved in several previous controversies over improper issuance of non-competitive oil leases.

* * * * *

Report prepared by Philip M. Hocker, Sierra Club, 11 April 1986, using information from U.S. Forest Service and Bureau of Land Management sources.

Attachments:
- Front of Lease W-88886, as issued.
- Map of leased area.
- Letter, Regional Forester to Wyoming State Director, May 29 1985, requesting no further leasing in area.
- Letter, Wyoming State Director to Regional Forester, Jun 10 1985, agreeing to request.
- Letter, Regional Forester to Wyoming State Director, Dec 4 1985, protesting issuance of lease W-88886.
- Letter, Wyoming State Director to Regional Forester, Dec 31 1985, requesting supporting information.
- Letter, Regional Forester to Wyoming State Director, Feb 10 1086, giving information supporting lease cancellation.

Form 3100-11*
(March 1984)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FORM APPROVED
OMB No. 1004-0000
Expires January 31, 1986

Serial No.
W-80866

OFFER TO LEASE AND LEASE FOR OIL AND GAS

The undersigned (reverse) offers to lease all or any of the lands in item 2 that are available for lease pursuant to the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.), the Mineral Le
Act for Acquired Lands (30 U.S.C. 351-359), the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), or the

Read Instructions Before Completing

1. Name CLAYTON W. WILLIAMS, JR.
Street 1451 Larimer Street, Suite 200
City, State, Zip Code Denver, Colorado 80202

F.S. R-4
RECEIVED
NOV 25 1985
RL&M

DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
1986 JUN -7 PM 1:4
RECEIVED
CHEYENNE, WYOMING

2. This offer/lease is for: (Check Only One) ☒ PUBLIC DOMAIN LANDS ☐ ACQUIRED LANDS (percent U.S. interest)

Surface managing agency if other than BLM: U.S. Forest Service
Unit/Project Bridger-Teton National Fores

Legal description of land requested:

T. 45 North R. 113 West Meridian 6th P.M. State Wyoming County Teton
Sec. 25: Lots 1,2,3,4,5,6,7,8, NW/4, W/2NE/4, NE/4NE/4, SE/4SE/4
Sec. 26: Lots 1,2,3,4,5,E/2NE/4
Sec. 27: Lots 1,2,3,4,5
Sec. 28: Lots 1,2,3
Sec. 29: Lot 1, NW/4NE/4, N/2NW/4
Sec. 30: N/2NE/4
Sec. 33: W/2NE/4, S/2S/2NW/4, SW/4, W/2SE/4, SE/4SE/4
Sec. 34: S/2S/2
Sec. 35: E/2NW/4SW/4, SW/4NW/4SW/4, SW/4SW/4, E/2SW/4, E/2E/2SW/4NE/4, SE/4NE/4, SE/4
Sec. 36: S/2N/2, S/2

Total acres applied for 2,699.

Amount remitted: Filing fee $ 75.00 Rental fee $ 2,700.00 Total $ 2,775.00

DO NOT WRITE BELOW THIS LINE

3. Land included in lease:

T. 45 North R. 113 West Meridian 6th Principal State Wyoming County Teton
Sec. 26: Lots 1, 2, 3, 4, 5, E½NE¼
27: Lots 1, 2, 3, 4, 5
28: Lot 1
33: S½SE¼
34: S½S½
35: E½E½SW¼NE¼, SE¼NE¼, E½NW¼SW¼, SW¼NW¼SW¼,
SW¼SW¼, E½SW¼, SE¼
36: S½N½, S½

Lands in offer were not
within a known geologic
structure on 11/8/85.
Don O H
District Manager
Rock Springs District

Total acres in lease 1520.38
Rental retained $ 1521.00

In accordance with the above offer, or the previously submitted simultaneous oil and gas lease application or competitive bid, this lease is issued granting the exclusive right to drill for, mi extract, remove and dispose of all the oil and gas (except helium) in the lands described in item 3 together with the right to build and maintain necessary improvements thereupon for the term indicated below, subject to renewal or extension in accordance with the appropriate leasing authority. Rights granted are subject to applicable laws, the terms, conditions, and attached stipulations of t lease, the Secretary of the Interior's regulations and formal orders in effect as of lease issuance, and to regulations and formal orders hereafter promulgated when not inconsistent with lease rig granted or specific provisions of this lease.

Type and primary term of lease:

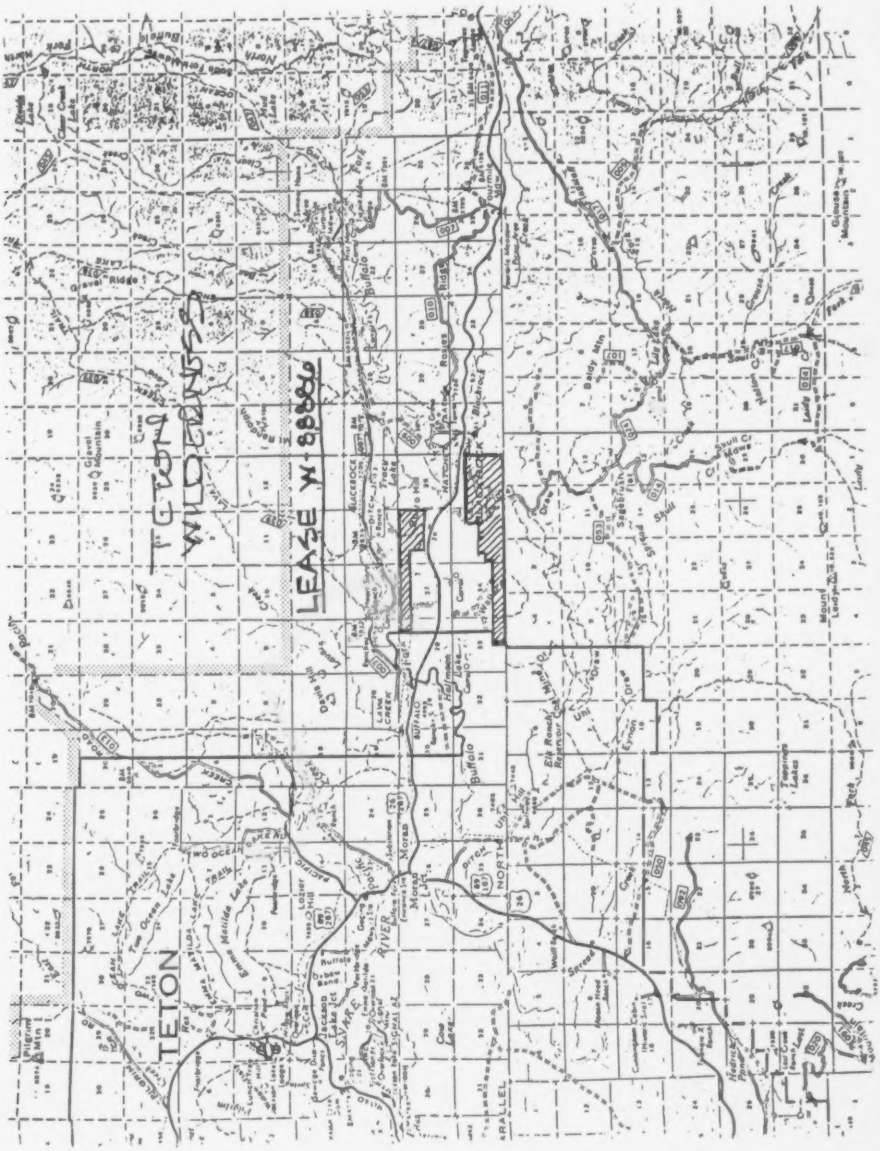
☐ Simultaneous noncompetitive lease (ten years)
☒ Regular noncompetitive lease (ten years)
☐ Competitive lease (five years)
☐ Other

THE UNITED STATES OF AMERICA
by /s/ ANDREW L. TARSHIS
(Signing Officer)
Chief, Oil &
Gas Section
(Title)
NOV 18 1985
(Date)

EFFECTIVE DATE OF LEASE DEC 1 1985

*(Formerly 3110-1, 2, 3, 3120-1, 7, 3130-4, 5, and 7)

FOR USFS-OGDEN


TETON WILDERNESS
LEASE W-88866
TETON
Buffalo
Moran
SNAKE RIVER
Gravel Mountain
Gravel Ridge
Davis Hill
Lava Creek
Halfmoon Lake
Blackrock
Elk Ranch Reservoir
Emma Matilda Lake
Two Ocean Lake
Pilgrim Mtn
Baldy Mtn
Lily Lake
Sagebrush Flat
Togwotee Pass

Intermountain Region
324 25th Street
Ogden, UT 84401

2820

MAY 29 1985

Mr. Hillary A. Oden
Wyoming State Director
Bureau of Land Management
P.O. Box 1828
Cheyenne, WY 82001

Dear Hillary:

In the past few months, we have forwarded to your office recommendations for the issuance of oil and gas leases for more than 100 parcels of land within the Bridger-Teton National Forest.

Due to the environmental sensitivity of the Bridger-Teton National Forest, the intense public concern regarding its management, and the anticipated completion of further environmental assessments and/or the Forest Plan in the near future, we feel that the further processing of oil and gas leases involving the Bridger-Teton National Forest should be delayed until these are completed and we submit new reports.

We request that you return to us all reports which your staff has not yet issued.

You should continue to process the rejection of leases involving Wildernesses as identified in our January 23 letter (2820).

If you have any questions regarding this request, please call Bill Miller. His telephone number is FTS 586-5157 or (801) 625-5157.

Thank you for your cooperation.

Sincerely,

E R Browning

J. S. TIXIER
Regional Forester

cc:
Bridger-Teton NF

LMeier:lpb 5-23-85 12

United States Department of the Interior

Bureau of Land Management
Wyoming State Office
P.O. Box 1828
Cheyenne, Wyoming 82003

IN REPLY REFER TO
3100
(923d)

JUN 10 1985

F.S. R-4
RECEIVED
JUN 13 1985
RL&M

Mr. J. S. Tixier
Regional Forester
United States Forest Service
324 25th Street
Ogden, Utah 84401

Dear Mr. Tixier:

As requested in your letter dated May 29, 1985, we are returning the letters of recommendation submitted by your office on January 15, January 22, March 13, and March 14, 1985, concerning the issuance of oil and gas leases within the Bridger-Teton National Forest.

Oil and gas leases have not been issued for any of the lands described in those letters. We will suspend oil and gas lease issuance within the Bridger-Teton National Forest until further advised by you.

Sincerely yours,

Hillary A. Oden

Hillary A. Oden
State Director

Enclosures

FILE COPY

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ROCK SPRINGS DISTRICT OFFICE
P.O. Box 1869
Rock Springs, Wyoming 82902-1869
(307) 382-5350

IN REPLY REFER TO:
3100 (411)

NOV 1 2 1985

Memorandum

To: State Director (923)

From: District Manager

Subject: History of Oil and Gas Lease Offer W-88886

The Leidy Creek Unit, Exxon operator, in which lease W-88886 is located, was approved August 13, 1984. Approval of the unit and unit geology by conditions of the Krug memorandum allows leasing of unleased Federal minerals in T.45N., R.113W.

The APD for the initial unit well was approved September 7, 1984. The well was spudded October 30, 1984 and plugged as a dry hole January 18, 1985.

Exxon applied to U.S.F.S. for a geophysical permit to do additional geophysical exploration during the winter of 1984/1985 after the first unit well was dry. The permit was refused, the U.S.F.S. not allowing wintertime geophysical operations. The geophysical permit was granted by U.S.F.S. for Spring of 1985.

Exxon requested and was granted an SOP, effective May 1, 1985, to end no later than September 1, 1986. The geophysical exploration was completed and evaluation was being made as of the date of this memo.

Currently, lease W-88886 does not lie within a KGS and is clearlisted pursuant to your memo of October 8, 1985. The lease offer is attached.

Donald H.

DEPARTMENT OF THE INTERIOR
[illegible]
1985 NOV 14 AM 9:30
CHEYENNE, WYOMING

Enclosure

United States Department of Agriculture
Forest Service
Intermountain Region
324 25th Street
Ogden, UT 84401

DEPARTMENT OF [illegible]
BUREAU OF L[illegible]
1985 DEC 12 AM 10 00
RECEIVED
CHEYENNE, WYOMING

Reply to: 2820

Date: DEC 4 1985

12/12/85
ROUTING
3
3

Mr. Hillary A. Oden
Wyoming State Director
Bureau of Land Management
P.O. Box 1828
Cheyenne, WY 82001

Dear Hillary:

On November 26, we received a copy of oil and gas lease W-88886 issued by your office on November 18, 1985. We are very concerned about the issuance of this lease because it is located within one of the more environmentally sensitive areas of the Bridger-Teton National Forest and was issued contrary to our agreement to suspend oil and gas leasing within the Forest until the Forest plan and/or further environmental assessments were completed. Enclosed is a copy of the lease and the correspondence relating to the suspension of leasing within the Bridger-Teton National Forest. ✓

We realize that the lease was issued through an oversight based on an out-of-date Forest Service report. We, therefore, request that the lease be cancelled as being issued in error and the application be held in suspension. We are basing this request on the following reasons:

1. NEPA documentaton had not been completed prior to lease issuance; therefore, full compliance with the National Environmental Policy Act of 1969 had not been achieved.

2. The issuance of the lease is inconsistent with your decision as authorized officer to suspend leasing within the Bridger-Teton National Forest.

It is unfortunate that the error did occur; however, we appreciate the continued cooperation that we have received from your office.

Sincerely,

for J. S. TIXIER
Regional Forester

Enclosures

W-88886
3111
(923a)

DEC 3 1 1985

12/27
12-30.
12/30

Mr. J. S. Tixier
Regional Forester
Intermountain Region
United States Forest Service
324 25th Street
Ogden, UT 84401

Dear Mr. Tixier:

This is in regard to your letter of December 4, 1985, regarding our issuance of oil and gas lease W-88886 in the Bridger-Teton National Forest.

Clearly, we made a mistake in issuing this lease. Your letter of May 20, 1985, unambiguously requests that we suspend action on all lease actions in the Bridger-Teton National Forest until planning and environmental efforts have been completed. This particular case was one of a small number which had already progressed part way through the system, and it slipped through. We have taken positive steps to prevent a recurrence.

In response to your request, we stand ready to initiate action to cancel the lease. The rationale for cancellation is based on your statement that NEPA documentation has not been completed. In order to complete the administrative file prior to rendering a decision to cancel, we ask that you provide us with documentation regarding efforts underway to comply with NEPA requirements. These would be in the nature of preliminary environmental assessments or planning documents that identify the need to do additional environmental analyses, whether on a regional, site-specific, or topical basis.

We regret having to make this request under the circumstances; however, we believe that documentation of this nature will be necessary to support a cancellation and to return the subject lease offer to a pending status.

If you have any questions regarding the documentation, please have your representative contact Andrew Tarshis of this office (307-772-2297).

Sincerely yours,

Hillary A. Oden

Hillary A. Oden
State Director

cc:
Tarshis (923)

ATarshis:kat:12-27-85
0112n

United States
Department of
Agriculture

Forest
Service

Intermountain
Region

324 25th Street
Ogden, UT 84401

Reply to 2820

Date FEB 10 1986

Mr. Hillary A. Oden
Wyoming State Director
Bureau of Land Management
P. O. Box 1828
Cheyenne, WY 82001

Dear Hillary:

This is in response to your December 31, 1985, request (923a) for documentation to support the cancellation of oil and gas lease W-88886.

We requested that you initiate cancellation of W-88886 primarily because NEPA requirements were not fully complied with prior to lease issuance.

Personnel on the Bridger-Teton National Forest are currently working on the Forest-wide Environmental Impact Statement (EIS) and Land and Resource Management Plan. The draft EIS and Plan should be available for public review from April through July 1986. The final documents are not anticipated until mid-1987.

A preliminary environmental review conducted as a part of the planning/EIS process indicates that the lands included in W-88886 are within an area of high environmental sensitivity and there is potential for significant environmental impacts.

The lease area is within a grizzly bear habitat area. The grizzly is classified as a threatened species under the Endangered Species Act. Goals [illegible] are to maintain or improve essential habitat for recovered [illegible] populations of grizzly bear and to minimize the potential for and [illegible] bear/human conflicts. Mineral leasing, exploration, and development may not be allowed if upon final analysis the grizzly bear may be adversly affected. The management area also contains high visual quality values. This visual sensitivity is due to the lease area being adjacent to the Grand Teton National Park and in close proximity to the Teton Wilderness area. It is also located within the greater Yellowstone Ecosystem, an area of significant environmental concern and controversy.

Sincerely,

E R Browning
For J. S. TIXIER
Regional Forester

DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
1986 FEB 13 AM 9: 30
CHEYENNE, WYOMING

FH
Record [illegible]

IL
Uses
Oil + Gas Leases

Jackson Hole, Wyoming, Area

8/15/47

Memorandum Regarding Oil and Gas Leases

Memorandum to: the Director, Bureau of Land Management, and the Director, Geological Survey, from: The Secretary of the Interior.

After conferring with proponents and opponents of oil and gas development in the Jackson Hole area of northwestern Wyoming, I have concluded that unit plans may be approved, oil and gas leases issued, and drilling authorized on lands in the Teton National Forest south of the 11th standard parallel, exclusive of lands lying within the Teton Wilderness Area south of said parallel, subject to the following conditions:

(1) No unit plan will be approved unless the Geological Survey reports that the structural conditions are such as to warrant the belief that the lands included therein may contain oil or gas. Prior to such approval, copies of the proposed unit plan will be submitted to all interested agencies of this Department, as well as to the Forest Service, Department of Agriculture, for recommendations as to stipulations or conditions which it is felt should be incorporated into that plan.

(2) Prospecting and development under an approved unit plant shall not be permitted until all lands within the area are made subject to the unit plan unless a determination shall be made by the Secretary or his representative that the unit operator has made every reasonable effort to unitize all lands and the uncommitted land is insufficient in amount or so located that the orderly development of the unit area will not be adversely affected. If any part of the geological structure is located on Federal lands which are within the Jackson Hole National Monument, the Teton Wilderness Area, or which are otherwise unavailable for leasing, a unit plan for the remaining available acreage on the structure will not be approved unless the Geological Survey reports that oil or gas development, limited to the available lands, is in the best interests of the United States.

(3) All leases shall provide that no drilling will be authorized except under an approved unit plan.

(4) All leases and all unit plans for lands within the area must contain a provision vesting in the Secretary of the Interior, or his duly authorized representatives, control over the rate of prospecting and development, including, in particular, the spac-ing of wells and such other conditions as may be deemed necessary in any case for the protection of the wildlife or scenic values within the area.

The lands north of the area defined herein shall continue to be temporarily withheld from leasing under the oil and gas provisions of the Mineral Leasing Act, unless the land in T. 45 N., R. 113 W., 6th P.M., Wyoming outside the Jackson Hole National Monument and outside the Teton Wilderness Area are deemed necessary to establish or complete a logical unit area.

J. A. Krug,
Secretary of the Interior

United States Department of the Interior

Bureau of Land Management
Wyoming State Office
P.O. Box 1828
Cheyenne, Wyoming 82003

IN REPLY REFER TO:
3109
(923-12)

Oct 5, 1985

DRAFT 0094f

Memorandum

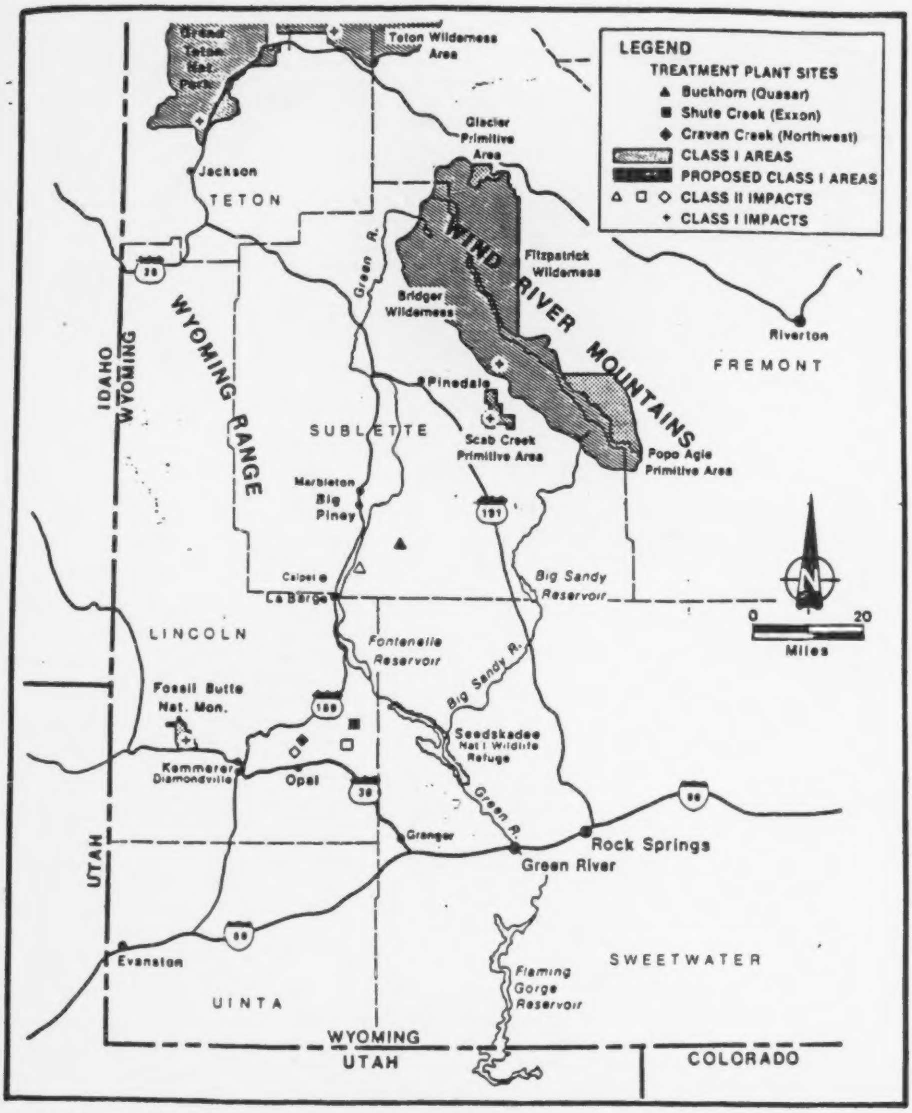
To: District Manager, Rock Springs

From: State Director

Subject: Clayton W. Williams, Jr., Lease Application W-88886

We have reviewed your memorandum of September 16, 1985, regarding Mr. Williams' lease application W-88886 and the supporting documentation found in the lease case file. The Leidy Creek Unit is in an exploratory phase with one well, drilled by Exxon, plugged and abandoned on January 19, 1985. In a telephone conversation on October 2, 1985, with Bob Chase of your office and Jim Taylor, Lynn Rust and Beverly Giza of the State Office, Bob indicated that although Exxon might drill a second well, no APD had been submitted to date. It is, therefore, the opinion of the State Office that parcel W-88886 can no longer be "held" pending Exxon's possible future activities in the area. As your memo indicates, since the lands underlying the referenced parcel are necessary to complete the logical unit area, the Krug memorandum allows leasing of the unleased Federal minerals in T. 45 N., R. 113 W..

cc: Taylor (923) w/Rock Spgs. memo
Giza (923) w/Rock Spgs. memo
Rust (923) w/Rock Spgs. memo


LEGEND
TREATMENT PLANT SITES
▲ Buckhorn (Quasar)
■ Shute Creek (Exxon)
◆ Craven Creek (Northwest)
CLASS I AREAS
PROPOSED CLASS I AREAS
△ □ ◇ CLASS II IMPACTS
+ CLASS I IMPACTS
Grand Teton Nat. Park
Teton Wilderness Area
Glacier Primitive Area
Jackson
TETON
WIND RIVER MOUNTAINS
Fitzpatrick Wilderness
Bridger Wilderness
Riverton
FREMONT
WYOMING RANGE
IDAHO
WYOMING
Green R.
Pinedale
SUBLETTE
Scab Creek Primitive Area
Popo Agie Primitive Area
Marbleton
Big Piney
191
Calpet
La Barge
Big Sandy Reservoir
0
20
Miles
N
LINCOLN
Fontenelle Reservoir
Big Sandy R.
Fossil Butte Nat. Mon.
189
Seedskadee Nat'l Wildlife Refuge
Kemmerer
Diamondville
Opal
30
Green R.
80
Granger
Rock Springs
Green River
UTAH
80
Evanston
SWEETWATER
Flaming Gorge Reservoir
UINTA
WYOMING
UTAH
COLORADO

MAP 4-7 LOCATIONS OF MAXIMUM 24-HOUR AVERAGE SO_2 CONCENTRATIONS IN PSD CLASS I AND CLASS II AREAS FOR THE SHUTE CREEK ALTERNATIVE

STATE OF MONTANA
ENVIRONMENTAL QUALITY COUNCIL
STATE CAPITOL
HELENA, MONTANA 59620
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Thomas M. France
Tom Roy
Everett E. Shuey

September 9, 1986

TO: Tom France, EQC Member

FROM: Gail Kuntz, Resource Specialist gK

RE: Impacts of Oil and Gas Development Activities in Areas of Environmental Concern

As you requested, I have conducted a review of selected environmental impacts of oil and gas activities and associated access road construction in areas that are environmentally sensitive. Also as you requested, the review focuses primarily on regional impacts rather than disturbances confined to drilling sites such as reserve pit construction. The impacts discussed herein include those created by human intrusion in areas high in natural environmental values such as important wildlife habitat and outdoor recreation.

Given time constraints for researching this issue, I have relied upon published studies and interviews with wildlife professionals and government officials. It should be noted that exceptions to the findings I have included undoubtedly exist. Also, there are undoubtedly other points of view than those presented in this memo concerning when and for what reasons a given type of environmental impact should be considered significant, whether impacts are short or long term, and whether the impacts can be reversed.

The following sections present case studies of environmental impacts relating to oil and gas development in Wyoming, Alberta and North Dakota. Attachment I provides a summary of selected scientific literature.

SHELL CANADA'S PROPOSED JUTLAND (SOUTH CASTLE) WELL

The EQC toured Shell Canada's Waterton gas field, gas treatment plant and one drilling site on August 6. In June 1986 Shell received approval from Alberta's Energy Resources Conservation Board (ERCB) to drill a new well, the Jutland well in the South Castle drainage which abuts the northern boundary of Waterton Lakes National Park. The approval is contingent on Shell Canada discovering promising underground strata at another well currently being drilled. There is considerable controversy concerning the drilling in the South Castle area because of its value as wildlife habitat (elk, bighorn sheep, mountain goat, grizzly and black bear, cougar, etc.). The area is also valued for primitive recreation opportunities. The Alberta government had originally designated the area a "Prime Protection Zone" for maintaining wildland values, but its status was changed in 1984 to "General Recreation" which allows petroleum and natural gas exploration and development under special conditions and controls.

In its decision report on the Jutland well, the ERCB noted that four-wheel drive vehicles can currently travel up to and beyond the proposed well site on primitive roads and that the site area was previously disturbed and cleared by salvage logging operations. Shell proposed to improve the existing roads but to locate its drilling camp approximately four miles from the well site and to control access to the area by a locked and guarded gate at the camp location. Additionally, Shell proposed to minimize helicopter use, prohibit its crew from carrying firearms, and carefully control disposal of garbage and waste. The ERCB stated that consideration should be given to blocking access further away from the drill site, but that the mitigation measures should be effective.

Because of the controversy concerning the Jutland well the ERCB scheduled a public hearing in early January 1986. Some testimony and research presented during the hearing are relevant to an examination of impacts that can occur as a result of oil and gas activity in environmentally sensitive areas.

B.N. McLellan, Director of the Canadian Border Grizzly Project, testified as a witness for Shell Canada and said he had suggested many of the mitigation measures that were proposed by the company to minimize adverse impacts on grizzly bears. He said there are three ways in which human activities affect bear populations and other wildlife: 1) by altering habitat; 2) by displacing bears and thereby causing the bears to lose habitat; and 3) by killing bears through legal hunting, poaching, real and believed protection of human life, and protection of property such as livestock. According to McLellan, habitat loss and bear displacement due to the Shell project would be insignificant, but human induced mortality would be "95 percent of the problem". He said that "access causes all types of mortality to increase very very rapidly." McLellan said that survival of adult (5-15 years old) and sub-adult (2-4 years old) bears is most critical to population stability, but that in his many years of bear research, and familiarity with bear studies all along the Rockies he knew of no radio-collared bear over three years old that had died of natural causes. He concluded that with extreme care to close the roads, long term impact from the Jutland drilling might be fairly minimal, but without good access control there would be a significant impact on the bear population in the long term.

A key aspect of the controversy over the Jutland well concerns an on-going debate about how much human activity an essentially wild area can absorb before its character is so altered that it no longer is capable of supporting wildlife species such as grizzly bears. Dr. Charles Jonkel, University of Montana bear researcher, testified that an important issue concerning any individual well drilling project in the Waterton

Lakes-Glacier Park area (including the proposed Jutland well, the proposed Hall Creek and Goat Mountain wells in Montana, and proposed drilling to the west in British Columbia) is the cumulative effect on sensitive species such as the grizzly bear and wolf (which has also been observed in the South Castle area). He said there is a lack of documentation of cumulative effects and long term changes in bear behavior created by encounters with humans and other assorted disturbances throughout their range. Dr. Jonkel stated that habitat disturbance and even seemingly minor displacement of bears can cause nutritional stress because the bears have only about three months in the average year to gain the weight they need to get through the rest of the year. He said the cumulative effect of all the types of disturbance bears may experience that displace them from the most productive areas in their habitat can affect the survival of individual bears.

Dr. Brian Horejsi, a wildlife biologist, submitted testimony based on both an examination of grizzly bear population data for southwest Alberta and wildlife impact studies he had conducted in a northwest Alberta study area where oil and gas development, logging and agricultural activity have occurred. His studies were funded in part by Mobile Oil Corporation. In Canada the grizzly bear has ~~not been~~ given "threatened" status. Hunting quotas have not been as limited as in Montana and are apparently not based on extensive population research. Horejsi stated that available data indicate an estimated 16-25 grizzly bears use the Waterton area as part of their home range. However, the estimates are uncertain and Canadian wildlife and parks agencies have called for more information from Waterton Lakes National Park on distribution, long-term reproductive and mortality rates and methods of preventing bear-man conflicts.

Under current grizzly bear recovery plans in the United States, Horejsi said that the allowable annual man-caused mortality quota in the Northern Continental Divide bear ecosystem is 3% of the population. Horejsi presented data showing that from 1982-1984 the bear population of the Waterton area experienced a minimum of 10% mortality and that, considering the uncertainties of population estimates and illegal kills, the annual mortality rate is likely to be closer to 25% of the total population. He said that the Waterton area bear population cannot sustain that level of mortality without declining, and that any new or improved access to the area will only exacerbate the existing problem. He said the situation is comparable to asking a rancher to give up a quarter section of his operation without knowing how large his herd is or where it might be located at given times of the year.

Horejsi cited research on grizzly populations along Montana's Rocky Mountain Front by Schallenberger and Jonkel (1980) which concluded, "(T)he single greatest conflict ...may be the roads and trails because of the increased numbers of people they attract to areas formerly lacking access. The upgrading of lightly used routes is also detrimental because of the greater human traffic which invariably follows. ...Because of the present intense interest in the Study Area by oil and gas operators, road construction and use must be considered a severe threat to grizzly habitat."

Horejsi's work in northwest Alberta indicated that agricultural grazing and land clearing had a more detrimental effect on grizzly bear populations than oil and gas development based on the number of kills that occurred, presumably related to livestock protection. However, between 1978 and 1981 a network of approximately 175 miles of roads was constructed to accommodate oil and gas development in an area covering about 25 sections that had been a "relative wilderness" through 1969. According to Horejsi's data the number of registered grizzly bear kills roughly doubled in areas where access was greatly improved from 1979-1984 due to both agricultural and oil/gas development.

Almost half of the bears were adult females, the most important component for maintaining a stable population. Horejsi's data also indicated that 38% of the kills were illegal. No field study has been conducted in the area to date to determine the status of the population. Horejsi concluded that "the heart of the problem is not simply access but, more precisely, the lack of restrictions on carrying guns and hunting." He testified that locked and guarded gates on access roads were not effective in Northwest Alberta and that controlling the public's access to any area requires long term, constant attention which, in his experience, has apparently never been adequate.

NATURAL GAS DEVELOPMENT AT RILEY RIDGE, WYOMING

Riley Ridge is located in the Wyoming Mountain Range approximately 90 miles south of Jackson (see Map 4-7). The Riley Ridge gas development project includes the following: 1) exploration and development of a 159,928-acre well field; 2) four sour gas treatment plants with a total processing capacity of 2.8 billion cubic feet per day (cfd) natural gas and producing 576 million cfd of methane; 3) associated gathering lines, trunk lines, railroads, access roads, transmission lines, and other ancillary facilities; and 4) processing and transportation of products and by-products such as sulfur. Individual portions of the project are owned by Northwest Pipeline Corporation/Mobil Oil Corporation; Exxon Company, U.S.A.; and American Quasar Petroleum Company/Williams Exploration Company.

Figure 2 shows the network of roads that are planned when the well field is fully developed. According to the Rock Springs BLM District office 25% of these roads will be new, but older roads and trails in the area will all be substantially upgraded and maintained for varying lengths of time. The extent of previous development was not clear from my cursory review of the material. Approximately half of the acreage in the wellfield was evaluated under Forest Service recreational criteria as "roaded natural" terrain, with another 27% considered "semi-primitive" and 20% "rural". No areas were classified as "primitive" nor were any considered "urban". Most of the existing roads were originally developed to facilitate timber sales or to gain access to previous oil and gas drilling operations. No decisions have been made about specific road closures that will occur when the wellfield is ultimately abandoned.

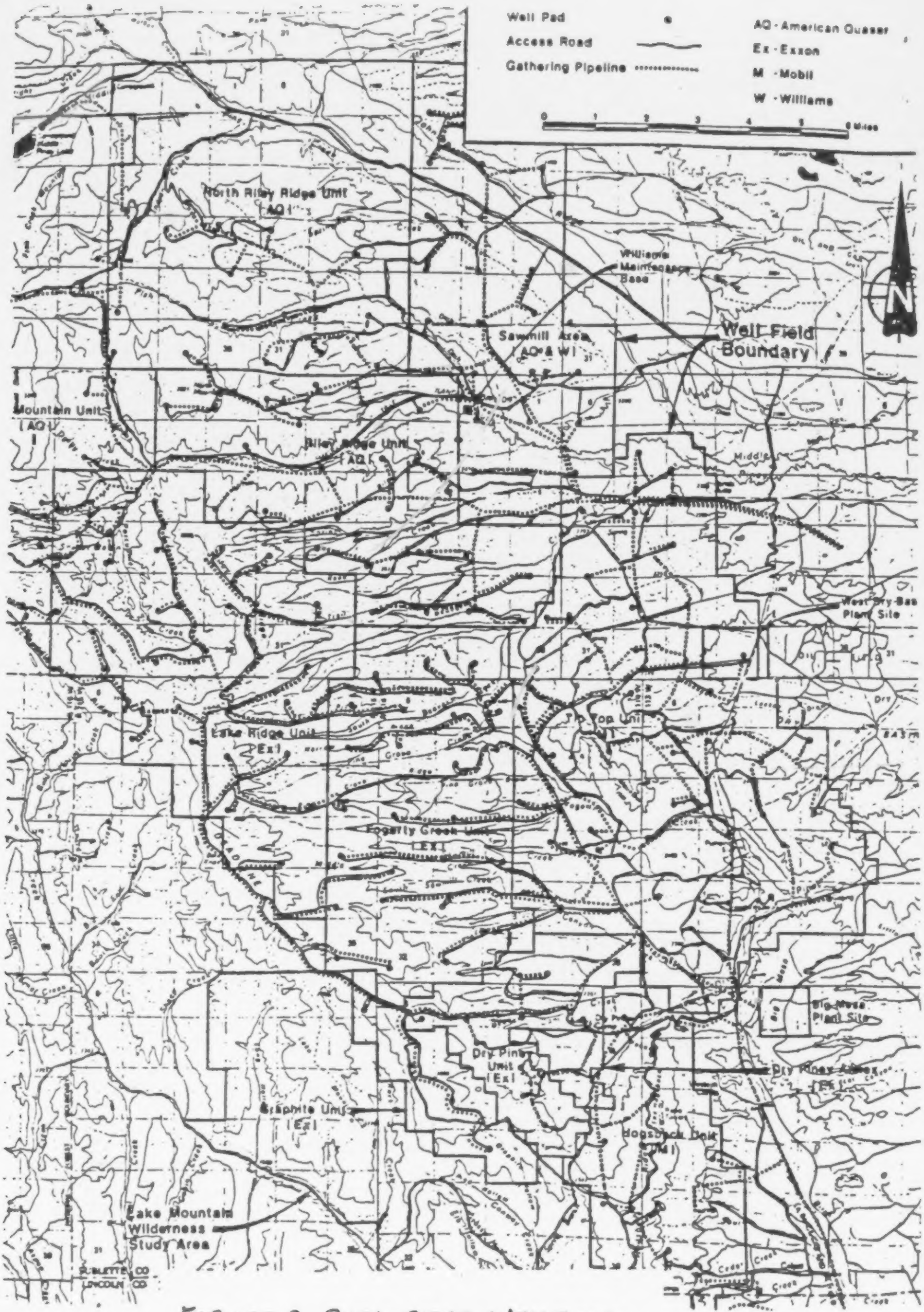

Well Pad
Access Road
Gathering Pipeline
AQ - American Quasar
Ex - Exxon
M - Mobil
W - Williams
0 1 2 3 4 5 6 Miles
N
North Riley Ridge Unit (AQ)
Williams Maintenance Base
Sawmill Area (AQ & W)
Well Field Boundary
Mountain Unit (AQ)
Riley Ridge Unit (AQ)
West Dry Basin Plant Site
Lake Ridge Unit (Ex)
Tip Top Unit
Fogarty Creek Unit (EX)
Big Mesa Plant Site
Dry Piney Unit (Ex)
Dry Piney Annex (Ex)
Graphite Unit (Ex)
Hogsback Unit (M)
Lake Mountain Wilderness Study Area
SUBLETTE CO
LINCOLN CO

FIGURE 2. RILEY RIDGE WELLFIELD

The "area of influence" where the majority of wellfield workers are expected to reside and recreate includes three wilderness areas, two primitive areas, one recommended wilderness and two wilderness study areas.

Predicted Impacts

The draft EIS prepared by the Bureau of Land Management for the Riley Ridge Project said that western Wyoming is currently undergoing a change from an area characterized by rangeland and wilderness to one experiencing industrial growth and active exploration and development of oil and gas and other energy and non-energy commodities. Peak direct employment due to the project was estimated at nearly 3,000 workers. The DEIS predicted serious impacts to wildlife from the increase in human population and accompanying human disturbance in the form of increased hunting and fishing pressure, disturbance and loss of critical ranges, and increased long-term siltation of streams. The native Colorado River cutthroat trout was identified as a species of special concern because the species only remains in approximately three areas in Wyoming and Riley Ridge has been one of the best (Dunning, 1986).

Both short-term and long-term significant impacts to wilderness-related values were predicted because of increased visitation. One unit of the wellfield would be located in and adjacent to a wilderness study area. Acid deposition in high mountain lakes was identified as an especially significant impact that could affect at least one of the wilderness areas as a result of the project. Impacts to timber were predicted to be generally favorable because construction of new access roads would reduce the costs of timber harvesting in otherwise remote and previously inaccessible areas. The BLM environmental studies indicated that "(T)he project as proposed would substantially alter the visual character of much of the project area and contribute to a continued progression from a predominantly natural landscape to one that is man-dominated."

Important wildlife areas occurring in the well field include elk summer range, critical calving range, critical winter range, and an elk feedground. Habitat losses attributable to the project include a total of 12,852 acres for various wildlife species. The loss of critical winter range translated into a predicted loss of 63 elk for the duration of wellfield construction and operation, and a productivity loss (i.e., animals not born and growing to maturity) of 681 elk. Productivity losses of 2,243 mule deer, 67 moose and 585 pronghorn were also predicted. Mule deer, bighorn sheep and moose habitat would receive some impacts but these were not considered significant, especially as compared to the elk. Increases in poaching and wanton killing of wildlife were predicted to be directly related to increases in human population of the area. A 66% and 37% increase was predicted in two counties in the study area, respectively. This translates into an annual loss of between 100 and 1,000 big game animals through project construction due to poaching.

Significant impacts to the Colorado River cutthroat trout and other game fish resources from the Riley Ridge Project were predicted. The anticipated causes are increased beaver pond siltation due to land and stream bed disturbances and increased fishing pressure.

Current Project Status and Wildlife Monitoring Results

About 21 wells and one sour gas treatment plant at Shute Creek east of Kemmerer have been completed. Development of the rest of the Riley Ridge project could take several years. To date there have been no adverse changes in air quality or changes in water quality due to acid deposition since the Shute Creek plant became operational in August 1986. There have been short term sedimentation impacts due to construction activity but fish populations have not been affected.

The Wyoming State Game Warden indicates there are now roads on nearly every ridge top in the Riley Ridge area that are used to access well sites. (Harju, 1986) He said that about 40% of the elk in the Riley Ridge wellfield area have abandoned their winter range. A BLM official said the elk population in the area is only about 30% of normal. Apparently the bulk of the herd has moved about a mile west. He said there was adequate forage in the area to the West because last winter was relatively mild, but that this would not be the case during a severe winter.

Monitoring studies during the winter of 1984-85 showed a shift in elk distribution when one well was drilled, followed by abandonment of 6000 acres of winter range when three wells were drilled at Riley Ridge. In the latter case, the physical disturbance consisted of approximately six miles of road and three well pads, or about 62 acres. When drilling occurred in an important elk calving area in 1984 the number of elk in the vicinity declined 85-90%, but the elk returned the next year when there was no activity (Johnson, 1985). These results were reported at a point when 14 wells had been drilled out of 64 wells that are planned.

Johnson reported that arrests and cases involving poaching were up about 100% (1986) in the area as compared to other years. The poaching primarily involved wintering mule deer. He said hunters complained about seeing much less game than in prior years, but the number of sightseers and traffic on deer winter range was much higher.

Harju said that the number of elk hunters in districts surrounding Big Piney and LeBarge has doubled and the number of deer hunters has tripled. The State Game Warden's office has consistently received complaints from recreationists and outfitters about the seismic disturbances in the area.

Whooping cranes and sandhill cranes have summer range in western Wyoming and as the number of whooping cranes from the Grey's Lake Recovery Programs in Idaho increases, the number of birds in Wyoming is predicted to increase also. The U.S. Fish and Wildlife Service and state wildlife biologists conducting monitoring studies have expressed concern about the increase in oil/gas activity in southwestern Wyoming as a potential source of disturbance to whooping cranes. The Riley Ridge development includes drainages that have been used as summer habitat by several whooping cranes since 1981. In addition to human disturbance, transmission lines associated with development in the area are a major concern because birds may fly into the wires and be electrocuted. Monitoring of bird response to surface seismic shoots in the Border area of Wyoming indicated that bird excitation and discomfort were most noticeable when blasting and helicopter activity approached within 3/4-1½ mile. In that study the whooper flew to escape the disturbance when it had approached to slightly under a mile away. During erratic, low-level escape flights birds may collide with power lines or fences. Also, the studies state that temporary or permanent abandonment of occupied habitat may occur. Significant problems due to oil and gas activity have apparently not occurred to date. A major goal of the research is to develop standards and guidelines to protect the whooping crane population.

LITTLE MISSOURI NATIONAL GRASSLANDS

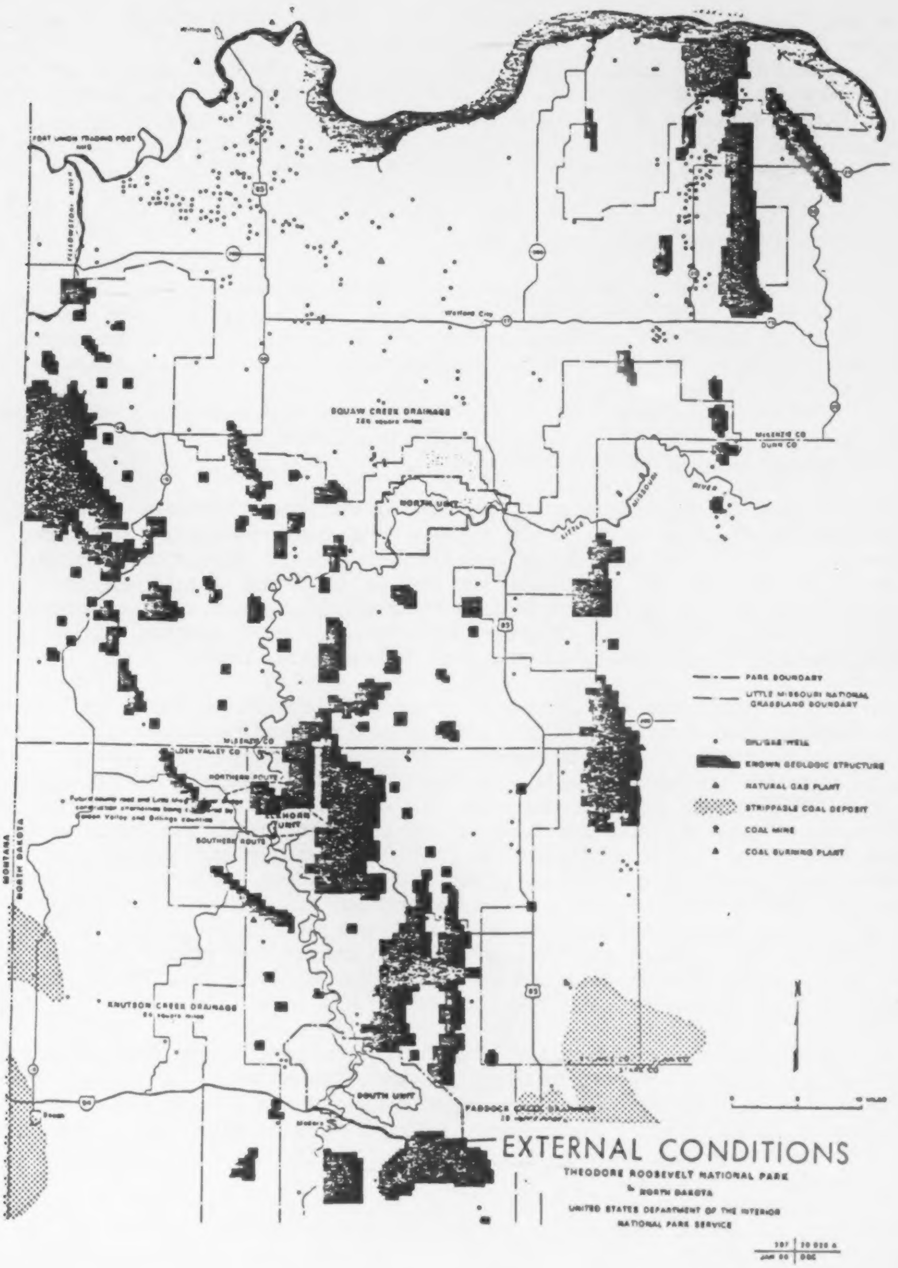
The Little Missouri National Grasslands (LMNG) in western North Dakota, encompass about 2 million acres that also include portions of the badlands and Theodore Roosevelt National Park. According to data from the North Dakota Game and Fish Department, the area is considered the state's primary refuge for big game and significant numbers of other species (i.e., 100% of the state's bighorn sheep, 75% of the mule deer, about 33% of the antelope, 50% of the elk). The Williston Basin oil and gas production area is also located there.

The accompanying map labelled, "External Conditions: Theodore Roosevelt National Park" shows most of the boundary of the grasslands, the park, locations of oil and gas wells and "Known Geologic Structures" which appear to contain at least 80% of the wells. The latter is a classification used by the federal government in characterizing mineral deposits and reservoirs. Thirty-four oilfields are located within approximately 50 kilometers of the park (Bilderback, 1986).

Much of the grasslands/badlands area is part of the Custer National Forest and includes one-third of all the public land in North Dakota. Conflicts between preservation and development have occurred based on a pattern that is by no means unique to the Custer Forest. The Forest will be publishing a final management plan in the next few weeks. Prior to the current planning effort, oil and gas leasing has occurred under the auspices of land management plans completed in 1974-75. Those plans established a number of "essentially roadless areas" (ERA's) which were set aside with special management directives — no major road systems would be allowed. However, the plans also recognized leases let in the early 1970's that allowed for development in the event of a discovery and prescribed surface occupancy cut-off dates designed to limit surface activity after a certain time, in most cases 1981 and 1982.

The Forest Supervisor has stated that "(T)he current tremendous level of success in finding oil and gas was not anticipated when the plans were made and so, the level of current impacts also exceeds what either we or the public visualized." (MacIntyre, 1980). The Supervisor also said that "(M)uch of the unique character of these areas is being lost, at least, for the immediate future."

According to Forest Service personnel (North, 1986), 111 miles of road were constructed in the thirteen ERA'S due to oil and gas development between 1979 and 1983. An estimated 10% of these roads has subsequently been re-habilitated. It is important to note that most of the grasslands were privately owned and homesteaded or grazed. They came under


Williston
FORT UNION TRADING POST NHS
YELLOWSTONE RIVER
SQUAW CREEK DRAINAGE
286 square miles
Watford City
McKENZIE CO
DUNN CO
NORTH UNIT
LITTLE MISSOURI RIVER
McKENZIE CO
GOLDEN VALLEY CO
NORTHERN ROUTE
Future county road and Little Missouri River bridge construction alternatives being considered by Golden Valley and Billings counties
ELKHORN UNIT
SOUTHERN ROUTE
MONTANA
NORTH DAKOTA
KNUTSON CREEK DRAINAGE
84 square miles
BILLINGS CO
STARK CO
PADDOCK CREEK DRAINAGE
SOUTH UNIT
Beach
Medora
85
94
PARK BOUNDARY
LITTLE MISSOURI NATIONAL GRASSLAND BOUNDARY
OIL/GAS WELL
KNOWN GEOLOGIC STRUCTURE
NATURAL GAS PLANT
STRIPPABLE COAL DEPOSIT
COAL MINE
COAL BURNING PLANT
N
0
10 MILES
EXTERNAL CONDITIONS
THEODORE ROOSEVELT NATIONAL PARK
NORTH DAKOTA
UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
387 | 20 030 A
JAN 80 | DSC

government control during the depression in the 1930's. There are two-track jeep trails over much of the area, including parts of many of the ERA's, which are used by ranchers to reach existing grazing leases. It is the improved access, equipment, and human activity associated with oil and gas development that is creating major concern. Most of the roads used to access oil/gas wells on Forest Service land have 60-foot rights-of-way with ditches on both sides (North, 1986). When these roads are rehabilitated, the topsoil is replaced and the road bed and ditches are recontoured. The Forest Service has stated that when oil and gas production declines, efforts will begin to restore the unique character of the ERA's.

According to Forest Service personnel, the final Custer National Forest management plan will propose retaining two of thirteen ERA's in roadless status. These areas include approximately 23,400 acres as compared to 243,000 acres reportedly included in the thirteen areas when they were first classified in the 1970's.

Wildlife Impacts

The North Dakota Department of Game and Fish does not consider the oil and gas impacts short-term. According to the Department, about 30% of the land area in the original thirteen ERA's has been affected, and nearly 25% of the entire Little Missouri grasslands, based on an estimated ¼-section affected by each well and ½-mile of new road to reach each well. The Department published a series of articles in 1980 discussing wildlife impacts that have occurred in the grasslands as a result of the oil/gas activity. Again, the key problem that is cited is increased accessibility to formerly isolated areas. A special problem is well siting and road construction in wooded draws and coulees that contain the most productive habitat (Lynott and McKenna, 1980).

Bighorn sheep were introduced to the grasslands/badlands in the 1950's and by 1969 a herd of about 50 animals existed in an area called Magpie Creek. Two oil wells were drilled in the area in the early 1960's without any apparent adverse effect except for limiting the eastern boundary of the animals' range (Lynott and McKenna, 1980). However, more wells were drilled in subsequent years, with accompanying roads. According to the Game and Fish Department, the herd now numbers about 27 animals occupying a range of only about two sections. The Department is uncertain whether the reduction in range size or stress, leading to decreased reproductivity or disease conditions has caused the population to decline. However, the Department believes the preponderance of roads, seismic trails, oil wells and general human activity have pushed the sheep into the remaining isolated area of their range and reduced their numbers.

The Game and Fish Department also believes that development is taking place too rapidly for mule deer to adapt and that these animals are not going to be found in their former numbers. As available range and forage is reduced and the deer are stressed by both overcrowding and human disturbance, the Department believes populations will suffer (McKenna and Lynott, 1980).

It should be noted that oil and gas activity in the Williston Basin has decreased considerably, as in all other producing areas of the country due to low oil prices. Hence at least some level of the impacts described from literature written during the early 1980's has subsided.

Theodore Roosevelt National Park

National Park Service officials have serious concerns about the level of activity due to both oil and gas and coal development that has been occurring in the areas surrounding the park. According to Harvey Wickware, Park Superintendent, the cumulative effect of sequential development of individual oil wells and the lack of a regional impact analyses make it very difficult to comprehend the magnitude of what is occurring (Wickware, 1986). The environmental concerns, as stated in the park's draft General Management Plan, include "visual impacts, noise, and obnoxious odors that conflict with the solitude and natural scene of the park" (Theodore Roosevelt National Park, 1986).

Air quality has deteriorated over western North Dakota and the park as a result of the development (Bilderback, 1986). Hydrogen sulfide (H_2S) is present in much of the gas produced with oil in the Williston Basin. This "associated" gas is flared if it is not economical to separate and treat it. Flaring the H_2S produces sulfur dioxide (SO_2). According to sources cited by Bilderback (1986) that include the North Dakota State Department of Health, the well fields around the park produced an estimated 21,995 tons of SO_2 from July 1, 1981 to June 30, 1982. Individual wells are not regulated as "point sources" of pollution under air quality laws. The amount of SO_2 produced had decreased by one-half by mid-1985, probably due to many wells being linked to gas processing facilities. Theodore Roosevelt National Park is a Class I air quality area where allowable levels of SO_2 and particulate matter are severely restricted. Air quality monitoring studies have indicated that both SO_2 and H_2S concentrations have periodically exceeded allowable concentrations in the park and that North Dakota's state ambient air standards have also been exceeded. Monitoring studies are being initiated this year to provide a measure of the secondary effects on vegetation of the park and grasslands area.

ATTACHMENT I

SUMMARY OF SCIENTIFIC LITERATURE RELATING TO WILDLIFE IMPACTS

Up until the past few years there have been relatively few studies that specifically focused on impacts on wildlife due to oil and gas-related activity. However, even a very superficial review indicates that numerous studies have documented the effects of roads and human activity on big game species.

Virtually all of the information summarized is taken from studies of big game species along the Rocky Mountain Front in Montana from 1980 to the present, including literature reviews that were included in the studies of individual species (see bibliography). The findings in these and other reports were used to formulate the wildlife management guidelines that Bob Martinka, Department of Fish, Wildlife and Parks, discussed during the EQC's public meeting in Choteau on August 4. Most of Montana's Rocky Mountain Front research related to oil and gas activity has focused on seismic testing.

Grizzly Bears

Aune (1984) reported that grizzly bears appeared to distribute themselves in both time and space to avoid seismic activity. His 1983 study was conducted in the area between Deep Creek and Dupuyer Creek where Sohio shot about 70 miles of seismic lines within an approximate two-month time period. Six radio-collared bears stayed at least two miles away from the seismic activity slightly over 90% of the time. Aune identified a number of interactive variables that have to be considered in analyzing the relationship of human activity and bear behavior, including individual variation in the tolerance of bears to the activity, habituation, presence of attractants, intensity of the human activity, and habitat preference/security.

Aune and Stivers (1983) reported that grizzly bears appear to be displaced from areas around individual drill sites. An area of 0.5 mile radius may be excluded from bear use at least temporarily during drilling. Displacement may occur over a much larger area if the bears are not habituated to a particular type of activity and/or where little topographical or vegetative screening exists. Also, increased traffic on upgraded roads or development of new roads appears to reduce available adjacent habitat. Other bear studies summarized by Aune indicated bear avoidance of roads in distances ranging from 50-600 meters, varying by the season, road use intensity and statistical techniques employed in the study.

Results of research on the effects of roads on grizzly bears were also summarized in the 1981 Grizzly Bear Recovery Plan prepared by the U.S. Fish and Wildlife Service. The plan summarizes research that found a significant negative correlation between brown bear observations and the number of roads and increased human activity from logging, especially the networks of roads and resulting secondary traffic. Grizzly bears generally avoid timber cutting units in northwestern Montana and those that were utilized were located along secondary or closed roads where the likelihood of human disturbance was low.

Mountain Goats

Joslin (1986) summarized results of mountain goat population monitoring along the Rocky Mountain Front begun in 1981, and hypothesized that there was a significant negative correlation between kid production/survival and seismic activity. From 1981 to 1985 approximately 360 miles of seismic lines were shot within mountain goat habitat, with activity peaking during 1983 and 1984. Joslin cited abundant literature detailing goat maladaptations that may result from repeated or prolonged stress, including decreased resistance to infection and disease and impairment or complete failure of reproductive function. Joslin also said that stress-inducing factors other than the human disturbance associated with seismic activity appeared to be minor over the course of the study. It is unknown whether stress-induced pneumonia is the causative factor in the population decline. The negative correlation between goat productivity and seismic activity suggested that the stress was cumulative over perhaps three years.

Joslin cited other research that indicated a prolonged stress response decreases an individual animal's ability to cope psychologically, which in turn is likely to increase susceptability to subsequent stressors.

In her 1984 and 1986 reports Joslin summarized research from other studies that indicate the following:

1. Stress-related changes generally include increased hormone levels, raised heart rates and respiration, as well as increased metabolic levels. 2. Intruders cause considerable stress in big horn sheep evaluated by heart rate telemetry. However, observable behavior of the sheep was a poor indicator of stress response. 3. The consequences of chronic stress are insidious and difficult to document, but they may show up as reduced feeding time even though stress increases metabolic rates and the need for food. 4. Stress may increase fetal abortion and resorption, reduce reproduction, and increase avoidance of certain areas, resulting in loss of access to resources and, ultimately, reduced population.

Joslin also summarized a study by Geist (1975) that states:

> "Harrassment by elevating the cost of living to individuals reduces their growth. ...It is important to note that anthropomorphism is not a reliable guide to what is or is not harassing to animals."

Joslin reviewed various other studies that indicate proliferation of roads and increased human access to mountain goat habitat has led to population declines in Montana, British Columbia, Idaho, Alberta, and Alaska.

Bighorn Sheep

Andryk (1983) reported that insufficient data was available to assess impacts of seismic activity on sheep reproduction; however, sheep displacement from lambing sites in the Walling Reef area of Montana's Rocky Mountain Front indicated increased stress associated with seismic exploration during the critical lambing period. In contrast, Andryk stated that a group of ewes at Ear Mountain did not leave a seismic test area, perhaps due to visual screening of the seismic line by a high ridge and/or to their salt hunger exceeding their desire to flee the disturbed area. Andryk summarized other research that indicates road use can impede sheep movement into previously heavily used habitat and that road use has been associated with decreased reproduction and health of bighorn herds.

Hook (1985) radio-collared eight bighorn sheep in 1982 and monitored their year-round movements for four years. Three seismic lines were run concurrently by two crews in the fall of 1983 on the herd's fall-winter range (the Ford-Fairview Plateau north of Benchmark). The only year of the study period that the sheep were not present on the plateau during the fall months was during the seismic activity in 1983. Hook indicated that the intense helicopter activity associated with the seismic shooting was apparently responsible for the dislocation of the bighorns.

Elk

Olson (1981) found that radio-collared elk remained out of the direct line of sight of seismic work in the Badger Creek-South Fork Two Medicine River area and preferred to remain at least one ridge or drainage from the disturbance, mostly in heavy timber cover. Also, the elk exposed to seismic activity moved at least 50% more between the researcher's observations than a control herd in the Middle Fork Flathead drainage that did not experience such disturbance. Olson noted that levels of seismic activity in winter similar to that conducted during the summer of his study might cause severe physiological stress on the herd and that forced movements to marginal winter range might disrupt reproductive processes and nutritional balances. The net effect could be calf losses and death of weaker members of the herd.

Olson reviewed elk studies conducted in various western states and Alberta and summarized the following research results:

1. Roads in the Blue Mountains of Washington significantly reduced both elk and deer distribution in meadow habitat. 2. In home range altered by man, individual elk or groups of elk will remain but will use the area differently, and the larger the area altered and the faster the rate of alteration, the more tenuous the elk use of that area becomes. 3. Disturbance of an area may interrupt herd use of critical winter range and force animals into marginal habitat. 4. Intense oil and gas exploration and development along the Pembrina River in Alberta produced many hastily planned roads, which in conjunction with a large network of seismic lines resulted in almost unlimited access to critical elk winter range. The net result was thought to be a reduction in total elk numbers and a decrease in productivity resulting from displacement of animals from primary range. 5. Elk have been shown to move their calves at earlier ages in areas where drilling was occurring and to avoid meadows which were visible from rig

access roads. 6. Seismic activity significantly affected the movements but not the distribution of elk in northern Michigan. Significant increases in elk daily movements may disturb rut and calving activities. 7. A study in Alberta indicated that helicopters have a very distressing effect on big game and that this activity should be kept at a minimum. 8. An elk-seismic study in Wyoming noted that elk at a distance of over two miles from the disturbance distributed themselves more at random, while elk within two miles of the disturbance used the terrain as a shelter from the activity. 9. Other research in Alberta indicated that the impact of seismic activity is probably cumulative and where one program might be easily tolerated, numerous projects create considerable impact from line clearing, explosions, machinery, campsites, and concentrated human activity.

Mule Deer

Kasworm (1981) felt that weather, livestock, grazing, housing development, and recreation in combination with oil and gas development could produce significant changes in mule deer populations. Ihsle's study (1982) was based on very limited data ~~that indicate~~ no obvious avoidance by deer of well sites in the Blackleaf-Teton area of Montana's Rocky Mountain Front. Ihsle's literature review, which included some studies concerning elk, indicated the following:

1. Activity at the site of an oil well did not statistically influence elk movements or distribution, probably due to the adaptability of elk to predictable and stationary disturbances. 2. Since mule deer can be easily habituated to human activities and are difficult to force from their home ranges, the direct effects of gas/oil drilling at scattered sites for short periods of time may be negligible. Dense fields, however, may lead to physical habitat loss and increased access which could increase the risk of mortality to mule deer due to habitat deterioration, accidents, or poaching. 3. Seismic activity had a greater potential for negatively impacting animals, through decreasing feeding efficiency, decreasing reproduction, and increasing energy expenditure, than did well drilling. 4. Disturbances are potentially more detrimental if unpredictable and frequent.

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Branch of Isotope Geology

IN REPLY
REFER TO:

January 13, 1986

To : Lorraine Mintzmyer
Regional Director, NPS

From : Irving Friedman, Research Geochemist
Branch of Isotope Geology

Subject: Threat associated with gas and oil development adjacent to
Yellowstone National Park

In response to your request regarding the above, my assessment follows:

As you are aware, oil and gas leases have been granted by the Forest Service on the west boundary of the Park in the Gallatin National Forest. The Park is in the overthrust belt which is an area of high petroleum potential.

Gas and oil development represents a threat to the thermal features of the Park at least as important as geothermal heat extraction. Geothermal operators can be made to, and actually may desire to reinject the geothermal fluids back into the aquifer. The result is that heat is removed from the system, but little fluid is lost. Other than the possibility of causing earthquakes by reinjection, there are minimal tectonic effects from such activities. Without minimizing the effect that heat extraction from the Island Park area might have on the geysers and hot springs of Yellowstone, gas and oil development also has great potential for damage.

Large scale petroleum extraction removes material from the subsurface and together with the possible reinjection of oil field brines can result in tectonic changes such as ground subsidence and earthquake generation, in addition to the possible alteration of subsurface flow to adjacent thermal features. Research in the Rangely, Colorado oil field has documented the influence of fluid injection in triggering earthquakes. ("An experiment in earthquake control at Rangely, Colorado" by C. B. Raleigh, J. H. Healy and I. D. Brederhoeft. Science vol. 191, 1230-1237, 1976).

Land subsidence caused by gas and oil extraction is well documented. For example, see "Subsidence over oil and gas fields" by J. C. Martin and S. Serdengecti, Reviews in Engineering Geology, vol. VI, 1984, Geological Society of America (see attached).

At present, little is known of the subsurface interconnections of aquifers between Yellowstone and its surroundings. This information is difficult to obtain without extensive drill hole data.

Recently reference has been made of a research report in which the authors postulate that the deep water feeding the thermal areas in Yellowstone originates north of the Park in the Gallatin Range. "The effects of subsurface boiling and dilution on the isotopic compositions of Yellowstone thermal water" by A. H. Truesdell, M. Nathenson and R. Rye - Journal of Geophysical Research, v. 82, P. 3694-3704 (1977). For a number of reasons, I take issue with the authors conclusions. I do not think that the Park can depend upon this supposed connection to the north to rule out impact from development to the west of the Park, nor in fact from any direction.

cc: Robert Fournier
Lynn Torak
John Rosholt

J. N. Rosholt
Subactivity RF
IG-Denver RF

✓IFriedman:mav

"VARIETY IN HUNTING AND FISHING"

NORTH DAKOTA GAME AND FISH DEPARTMENT

2121 LOVETT AVE.
BISMARCK, N. DAK. 58505
PHONE 701-224-2180

January 18, 1983

Mr. Howard Geduldig
Legal Intern
NWF, Natural Resource Clinic
Fleming Law Building
Boulder, CO 80309

Dear Mr. Geduldig:

We appreciate the interest your organization has shown in oil and gas development on the Little Missouri National Grasslands (LMNG), and apologize for not responding more quickly to your 17 November 1982 letter, but as you will see this is a very complex matter. Until now, we have been unable to give your inquiry the detailed attention we believe it deserves.

In your letter of November 17, 1982, you requested information on the degree of involvement of the State of North Dakota in management of wildlife resources on the LMNG, particularly with regard to protecting against the impacts of extensive oil and gas development. As you pointed out in your letter, the State of North Dakota has a trust obligation to manage the wildlife resource on the LMNG (and the contiguous area) and prevent "waste" of these assets. As the state agency with primary responsibility for fulfilling that obligation, the North Dakota Game and Fish Department recognizes its responsibility to minimize impacts to wildlife resource resulting from oil and gas development. However, recognizing one's responsibilities and having the ability to carry them out, can be two distinctly different things. I'm sure you are quite familiar with the problems a state wildlife agency faces in attempting to protect wildlife resources and assert the interests of wildlife users on lands owned and operated by other agencies or private interests. Acting in advisory capacity, we are able to carry out our mandated responsibility only to the degree that others are obligated or willing to cooperate in wildlife management.

In the case of the LMNG our cooperative management efforts with the U.S. Forest Service cover such an extended period of time and have changed in response to so many factors, that it is difficult to know exactly how much is relevant to your inquiry.

Because virtually all of the problems we currently face on the LMNG relative to oil and gas development stem from decisions made in the 1974 and 1975 Plans/EIS, we would like to begin by briefly describing the traditional management situation on the LMNG and our relationship with the U.S. Forest Service prior to the development of those plans.

Based primarily on requirements of the Sikes Act, the North Dakota Game and Fish Department and the U.S. Forest Service have for many years held annual coordination meetings and cooperated in certain aspects of wildlife management on the Little Missouri National Grasslands. A Memorandum of Understanding between the U.S. Forest Service and the North Dakota Game and Fish Department has existed since at least 1960 and served as the basis of our cooperative efforts (current MOU enclosure #1).

The scope and effectiveness of our relationship with the U.S. Forest Service has been limited by "traditional" management priorities and those laid out in the Bankhead Jones Act. Under past interpretations of this act, the dominant use of the National Grasslands is for livestock grazing and the primary management objective has been the enhancement of rangeland resources. Wildlife resources and related recreational use of the LMNG have been managed chiefly as by-products of a massive system of grassland agriculture. While most wildlife populations have been maintained at marginally acceptable levels, little if any effort or attention has been given to enhancement of wildlife habitats.

In the face of seemingly overwhelming legal and political obstacles to improved management, the North Dakota Game and Fish Department has traditionally limited its involvement to managing harvests and hunting seasons on the LMNG. A few cooperative wildlife investigations, the establishment of a series of livestock exclosure studies, and the introduction of bighorn sheep and wild turkeys have been the major cooperative management successes. Neither the North Dakota Game and Fish Department nor the U.S. Forest Service has ever developed a detailed long range plan for wildlife resources management on the LMNG.

This lack of management direction for wildlife resources was present in 1974 and 1975 management plans and a consequence, many of the potential conflicts between oil and gas development and wildlife resources were not addressed. As with livestock, it appears that the 1974 and 1975 management plans assumed that wildlife resources on the LMNG could exist as by-products in the face of oil and gas development as well, at least at the levels of development that were anticipated in the 1974 and 1975 Plans/EIS.

Limited oil and gas development had been occurring in parts of the LMNG since the 1960's, however, it was never extensive enough to present any appreciable problems for wildlife resources. The U.S. Forest Service has repeatedly assured us that when the 1974 and 1975 plans were written they did not anticipate the current extensive development. The plans did recognize that some development was likely to occur and described in very generic terms the types of impacts that might occur. In all fairness, it is doubtful that anyone could have foreseen, in the early 1970's, the rapid expansion of oil and gas development that has occurred since 1978. In any case, the door was left wide open for extensive development in the 1974 and 1975 plans, but the possible impacts were poorly described and there was no obvious method for control were it to become necessary. In addition, neither agency was sufficiently staffed nor prepared to deal with the rapid expansion of oil and gas exploration and development that took place in 1978. Although the U.S. Forest Service was "staffing up" in minerals and range personnel, they did not have a biologist stationed in North Dakota during the peak of development in 1980 and 1981.

The North Dakota Game and Fish Department had only begun its interagency coordination and technical assistance program (Federal Aid Project FW13C) in 1977. The 13C program was originally created in response to expanding coal development in the state and increasing requests for review and comment on federal projects in the 1970's as a result of the National Environmental Policy Act and other federal laws. The scope of the 13C program has gradually expanded to include technical assistance and coordination with all other state agencies and private industry on a wide variety of projects. There are two full-time biologists assigned to the project, as a result the amount of time and attention that could be given to any one project or agency was and is severely constrained. Extensive oil and gas development was just beginning in 1978 and compared to other problems it was not yet a major concern.

By early 1981, in the middle of the oil boom, both biologists originally assigned to the 13C project had transferred to other projects. I took over as project leader in 1979 and Ken Sambor replaced the other 13C biologist in early 1981. Neither of us had any substantial experience with oil development nor were we well acquainted with the maze of laws and regulations governing administration of the National Grasslands and the federal mineral estate. Although oil and gas development was expanding rapidly and we were very concerned about the myriad problems occurring as a result, initially we were not familiar enough with federal minerals administration to know exactly how and where to input or to whom. Much of our time and efforts with regard to development on the LMNG was initially spent in getting a handle on the situation and establishing mechanisms to improve coordination with the U.S. Forest Service.

The first noteworthy involvement in an oil and gas related issue came in May of 1980 when the U.S. Forest Service proposed to remove the Bennie Peer area from designation as an essentially roadless area (ERA) (enclosure #2). As part of the Mondak oil field, this area had undergone extensive development and become somewhat of an anomaly to the U.S. Forest Service. Apparently the U.S. Forest Service felt it no longer served any purpose to retain the ERA designation. The North Dakota Game and Fish Department objected feeling that retention as an ERA was needed to insure the best possible future restoration of the area in accordance with the established management direction for ERA's. With the support of then Governor Link's office, we were able to pursuade the U.S. Forest Service to retain the ERA designation. In response to a lack of coordination on the Bennie Peer issue, and in recognition of growing problems elsewhere, we attempted to shore up our relationship with U.S. Forest Service and develop more wildlife input into minerals management planning on the LMNG.

In June of 1980, the MOU was updated and expanded. Most of the revisions were directed at increasing coordination on minerals activities and related construction affecting wildlife and outdoor recreation. To further improve coordination on wildlife management and activities affecting wildlife, an interagency work group was started in the fall of 1980. Initially, the work consisted only of North Dakota Game and Fish and U.S. Forest Service representatives, who met regularly to discuss basic management problems and work toward cooperative solutions. Later members of the local grazing association were included as well as representatives of the oil industry. In order to have more direct input, Bruce Renhowe, our district land management biologist in Williston, was assigned to work with the U.S. Forest Service on a part-time basis in 1980. His primary duties were to review proposed development plans, identify potential wildlife conflicts and offer advice on site specific mitigations. Initially, Bruce was able to accompany the U.S. Forest Service on field inspections of many of the proposed well sites, pipeline corridors and road locations. The sheer number of projects precluded field inspection of many, but because of similarities, Bruce was able to offer general recommendations based on development plans and maps of the proposed locations. Virtually all of the environmental assessments and development plans issued by the U.S. Forest Service up to 1981 had addressed only one or two wells, the associated roads, and single or relatively small pipeline projects. Review and comment was possible on most. When a particular problem such as an eagle nesting territory was encountered, a field inspection was generally possible and specific recommendations were offered. As you can imagine, one biologist with other duties covering nearly one-quarter of the state was very hard pressed to review and input to all of the rapidly expanding developments.

Presumably because of the approach of the surface occupancy cutoff dates for ERA's, development began to expand very rapidly in 1980. Individual wells and roads consolidated into fully developed oil fields. New wells and roads began to spring up in many previously undeveloped areas on the LMNG. Realizing the need to have a full-time biologist available to the U.S. Forest Service, an interagency personnel agreement (IPA) was initiated in 1980. The U.S. Forest Service was undergoing personnel reassignments (they had no biologist assigned to North Dakota) and facing personnel ceilings. By hiring a North Dakota Game and Fish Department biologist via an IPA, there was a chance to accomplish several purposes. This would effectively bypass the U.S. Forest Service's personnel ceilings, provide the U.S. Forest Service with a biologist, and create direct interagency coordination on specific problems related to oil and gas development.

In June of 1981, Bryan Stotts was hired under an IPA and assigned to the McKenzie Ranger District at Watford City. Although his duties cover a wide range of activities, most of them relate to oil and gas development. As a part of the U.S. Forest Service ID teams, he has had direct input on wildlife mitigative measures for EA/development plans and is able to advise the North Dakota Game and Fish Department of major problems early in the planning process. Shortly after the hiring of Stotts, the U.S. Forest Service assigned East Zone biologist Bill Blunt to North Dakota and stationed him at the Medora Ranger District office in Dickinson.

Throughout 1980 and 1981, in our work group meetings problems resulting from oil development were a constant subject of discussion. As we became more familiar with federal process, and increased our awareness of the size and scope of the impacts, we began to push harder for more effective mitigation and become increasingly critical of the situation.

In early 1981 the U.S. Forest Service began to expand the size and scope of the EA/development plans being issued. The Medora District issued plans for Lower Ash Coulee covering roughly 30 square miles and the Magpie Whitetail Creek area covering 74 square miles. The McKenzie District issued the Lone Butte EA/Plan covering some 10 square miles.

The purpose of these larger area development plans was to provide advanced planning in anticipation of full development of the leases in these areas. The plans identified suitable well locations, displayed several possible road networks and located probable pipeline corridors. The plans were incorporated into an environmental assessment of the potential impacts of full development under each of the possible road networks.

The drafts of these plans and requests for our comments were still being sent to Bruce Renhowe in early 1981. Despite his best efforts, Bruce was unable to provide adequate input. He had neither the time nor experience with the review and comment process to evaluate these larger area plans. Located in our Williston field office, he did not have direct access to enough wildlife data and information to assess the potential impacts to wildlife resources over broad areas. Realizing that developments of this size would require more detailed analysis and comments, we requested the U.S. Forest Service to begin sending all area development plans directly to our Bismarck office.

For a number of reasons including time and manpower constraints; our overall unfamiliarity with the EA process; a key change in North Dakota Game and Fish personnel (our 13C biologist transferred); and some delays in the transfer of materials; the three previously mentioned EA's were written and approved with minimal input from or review and comment by our department. Given that IPA biologist Stotts and East Zone biologist Bill Blunt had only started in mid-1981, it is doubtful that they had the background and time to provide extensive wildlife input to these plans either. It seems these three EA's were written and evaluated primarily by range and minerals personnel of the U.S. Forest Service with only minimal input from or review by wildlife professionals.

As a consequence, we believe many impacts to wildlife resources were overlooked and in general the EA's were inadequate. Because of the U.S. Forest Service committment to honor existing leases, many issues which could have and should have been raised with regard to the adequacy of these EA's were not. In hind sight, the lack of a quantitative description of impacts to wildlife resources and the absence of a concurrent tracking of total development on the LMNG in these EA's is quite obvious. It is apparent to us now, that the rapid pace of development in 1980 and 1981 and the committment to honor existing leases lead to unanticipated and poorly evaluated impacts in many parts of the LMNG. Although the U.S. Forest Service had officially recognized as early as October 22, 1980, that the impacts exceeded the levels anticipated in their 1974 and 1975 Plans/EIS (see enclosures #3, 4), their committment to honor leases (enclosure #5) prevented any meaningful restrictions on the extent of development. Without the option of limiting development, the district personnel of the U.S. Forest Service had no choice but to accommodate development through these area plans. With development a foregone conclusion, it served no purpose to spend a great deal of time and effort evaluating impacts to wildlife.

In early 1981, the U.S. Forest Service initiated a series of contacts soliciting our input to the new plan being developed for the Custer National Forest. Recognizing that virtually all of the problems we presently face stem from deficiencies in the 1974 and 1975 Plans/EIS we decided to make a major effort to provide the Forest Service with our best data and advise for their forthcoming plan. That effort resulted in the two documents - Wildlife Resources of the LMNG (enclosure #6) and The North Dakota Game and Fish Department's Perspective and Comments on the Subject and Issues of 1982 Custer Forest Plan (enclosure #7) being forwarded to the U.S. Forest Service. Additional data and information on wildlife populations and recreation on the LMNG was transferred less formally. Several meetings were held in 1981 and 1982 to discuss a variety of other issues relative to the forest plans. With regard to oil and gas development our recommendations to the U.S. Forest Service can be summarized as follows:

- No wildcat drilling permits should be issued until a comprehensive updated evaluation of current impacts has been made and there is an orderly detailed plan of development.

- No leases should be issued or reissued until the same conditions as in #1 have been met. Continued development should be restricted to active fields for completion of known pools.

- No leases should be issued or reissued in ERA's except where intensive development has already occurred.

- Any future development must be based on an orderly plan which recognizes the fragile nature, unique character and irreplaceable wildlife values of the badlands of the Little Missouri River relative to the state of North Dakota.

We repeatedly stressed that limitations need to be placed on the extent of development in order to adeuqately protect the wildlife resources of the LMNG and preserve the amenity values vital to public use and enjoyment of these lands.

Subsequent to our input to the Forest Plan, we have consistently recommended against all major construction projects and developments pending completion and approval of the new Forest Plan/EIS. Throughout 1981 and 1982 to the present we have expanded and refined our efforts to cooperate with the U.S. Forest Service in management of oil development on the LMNG. Through the work group and other formal and informal communications at the district, forest and regional levels we have repeatedly voiced our concerns about the impacts that were occurring. Our consistent advise has been that development should be restricted as much as possible. In some instances our recommendations have been followed. We were particularly pleased when Forest Supervisor, James Mann, at our request, halted plans for a road crossing of the Little Missouri River. For the most part, however, the U.S. Forest Service has continued to allow development because of their committment to honor existing leases. The recent slowdown in drilling and exploration on the LMNG has given us a temporary reprieve and allowed us to do a certain amount of catching up.

One of the primary problems we faced during much of 1981 and 1982 was obtaining a comprehensive picture of the extent of development. We have tried to obtain updated maps of the development that has occurred and recommended that they be developed as a basis for evaluating overall impacts. To this date, we have not been provided a comprehensive updated map showing all roads, wells, pipelines and other facilities for either district of the LMNG. It appears that only now is the U.S. Forest Service beginning to evaluate the cummulative impacts and produce updated maps of total development.

The lack of a cummulative impact assessment is one of the objections we have raised in our most recent and most extensive involvement with any single oil and gas development plan. A draft of this plan, known as the Wannagan Area Oil and Gas Development Plan, was forwarded to us for review and comment in early 1982. To save a lengthy reinteration of the controversy that has ensued and culminated in our appeal of the plan to the Regional Forester, we have included copies of the major correspondence we have had with the U.S. Forest Service on the Wannagan Plan (see enclosure #8). A reading of this correspondence should provide you with some insight into our most recent efforts to protect wildlife resources on the LMNG.

In summary, we believe that given the conditions that exist, the North Dakota Game and Fish Department has made concerted efforts to fulfill its obligation to protect wildlife resources on the LMNG. While there is always more that could have been done, it is obvious that the ultimate responsibility lies with the U.S. Forest Service, the Bureau of Land

Management, and Minerals Management Service of the federal government. We have forwarded our concerns to the surface management agency (the U.S. Forest Service) and we believe it is their responsibility to carry those concerns to the agencies administering the federal mineral estate. Ultimately, it is up to these agencies to provide adequate protection of these lands by placing some reasonable limits on leasing and development.

Again, we appreciate your interest in this matter. If you have any further questions or if parts of this response are unclear, please advise us where we may assist you further.

Sincerely,

Michael G. McKenna
Natural Resources Coordinator

lr
enclosures (8)

1. F.S./G & F MOU
2. Proposal to Remove Bennie Peer
3. Letter from McIntyre
4. Letter from Filius
5. F.S. Committment to Honor Leases
6. Wildlife Resource Document
7. Game and Fish Perspective
8. Wannagan EA Documents

Enclosures retained in Subcommittee files.